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THE ORIGINS OF PROPERTY RIGHTS:

A COMPARISON ON THE BASIS OF

JOHN LOCKE'S CONCEPT OF PROPERTY

AND HIS

NATURAL LAW LIMITS BASED ON REASON

Par

Shelly Hiller Marguerat

Thèse de Doctorat

Sous la direction du Professeur Bénédict Winiger

(Références à jour au 12 mai 2014)

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intitulée :

« JOHN LOCKE'S CONCEPT OF PROPERTY : NATURAL LAW LIMITS BASED ON REASON »

La Faculté de droit autorise l'impression de la présente dissertation sans entendre émettre par là aucune opinion sur les propositions qui s'y trouvent énoncées.

Genève, **le 12 mai 2014**

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To my father

I. The aim of this research:

In this thesis, I argue that if we are to search for well-founded solutions for the preservation of our natural community, natural resources, animals, and mankind as a whole, modern society must reassess the current positive common law of property and if possible, the source of the problem. A good start would be to examine one of the recognised foundations of the governmental property law, John Locke, who is credited with the notion of protecting individual property rights as inherent rights based on natural law in opposition to the tyranny of arbitrary government power. Locke's theory of property has had a powerful influence on the most important fights to protect natural, individual, and inherent rights against tyranny, such as the American, French, and Spanish revolutions during the 18th and 19th centuries. Due to Locke's inherent rights of property, Locke is also considered by many authors to be the source of the unlimited accumulation of property and the capitalistic problem in its industrial form. In this thesis, I demonstrate that Locke never argued for selfish, unlimited accumulation. The purpose of this thesis is to demonstrate Locke's intent to confirm natural law limits as valid. Locke uses plain language and provides clear examples of natural law limits even after the creation of society. He further insists that it is only with the help of natural law limits on natural resources and living creatures that property law can remain valid and durable, without harming anyone, while balancing the needs of the self and the preservation of others. In a way, Locke not only confirms the validity of natural law limits espoused by the natural law teachers before his time, but also goes further to corroborate, reinforce, and develop such limits as necessary for his philosophy of property to be valid and lasting. This can be inferred from Locke's insistence on the common good, his moral use of reason, and his references to the possible peaceful state of nature.

II. The trigger for my research:

The fact that John Locke is considered by the traditional interpreters as well as by earth jurisprudence authors and environmentalists to be the source of the problem of unlimited accumulation of property triggered me to further explore his writings in particular. My first intention was to attack his writings and find within inconsistencies that do not go along with his predecessors. However, the more I read his writings from the source, the more I discovered that only parts of his *Second Treatise* that concern individual inherent rights of property were taken into account with complete ignorance as to the correlated obligations, insisted by him on the same level. I further discovered that he is, in fact, a very moral author who represents his role as a rational natural law author. As such, his writings and ideas are very much aligned with those of many of his predecessors. Additionally, I found out that Locke actually gives unique solutions to face problems that his predecessors could not find. One example of such a problem was how to base property rights on natural law, without the need of consent of everyone, which was for him impossible. I was surprised to discover that Locke, more so than his predecessors, demonstrates an important care throughout all his writings for the preservation of the whole of creation and the limited natural resources that he predicted at his time. Locke's answer that he developed and corroborated with clear references and examples is that of his natural law limits.

The traditional authors believe it was Locke's intention to give importance only to material possessions and their owners. This goes against Locke's own words, which interpret property to include liberties and life. The traditional author's arguments are very poorly supported by textual evidence, and they lean on mere speculations due to the time of Locke's writings. All their arguments are very vaguely supported by a few paragraphs of Locke's texts that are mostly not within the *Second Treatise*. The paragraphs that do come from the *Second Treatise*

that invite support for this materialistic reading of Locke are mostly used out of the context of the paragraphs, while ignoring parts of Locke's own words. For example, Locke writes that a government is there to better protect all people within that society and their property in a wide sense, including their lives and liberties. Here, the traditional authors only mention that, for Locke, the aim of the government is property protection, while interpreting property as mere material possessions. In other paragraphs, words were even inserted, changing Locke's intention. This occurs when Locke tries to explain that government can be dissolved if it uses arbitrary force and tyranny against its citizens. Here, the traditional reading inserts the word "always" into Locke's paragraph in explaining that, for Locke, there can be always a state of mere preservation of the self without concern for others. Thus, with very poor and distorted textual support from Locke, the traditional authors do not take into account Locke's clear moral words for the preservation of others, the whole of creation, and each member within society.

I thus argue that this regrettable and partial use of Locke's writing that has become the justification for the unlimited accumulation of property could now be used as a solution in finally taking into account Locke's integral writing on property and his natural law obligations. This could help our legal definition of property change from mere inherent rights to incorporate certain obligations as well.

III. The contribution of this thesis to Locke's interpretations and to the ecological crisis

My contribution is to further support the validity of Locke's natural law limits as applicable for governmental law on additional grounds. I support this notion with Locke's own writings, including many references in the *Second Treatise*, in demonstrating Locke's concern for the preservation of others and the whole of creation. This underscores the purpose of the limits, which is the preservation of the whole with no harm to anyone. I further support the validity of the natural law limits with Locke's moral use of reason, indicating the need to avoid harm to others. Additionally, I support the validity of the natural law limits with Locke's possible moral state of nature, demonstrating that Locke's limits have a general purpose and that Locke believes that if the limitations are followed, at least by a majority, a peaceful state of good will and mutual understanding and safe preservation can become a reality. I further confirm via different avenues that for Locke, as for the rest of the natural law authors, the law of nature is superior to the governmental law made by men. Locke emphasises that the law of government is founded on natural law, and as such, the law of government is to be regulated and interpreted according to natural law. This also confirms the eternal validity of the natural law limits. I further corroborate the validity of Locke's natural law limits via different texts of Locke, a part of the *Second Treatise*, sources that Locke himself used, and the texts of his natural law predecessors. I also support my interpretation of Locke by the similarity of my interpretation to Locke's predecessors and other juridical-philosophers before his time.

I think my main contribution to Locke's interpretation was in developing the two additional limitations clearly mentioned within Locke's *Second Treatise* but not often mentioned and developed by other modern interpreters of Locke. Those are the natural law limits on natural resources and animal life forms in possessions. I argue those are the most important limits that, if applied in governmental law, might be the answer to the ecological crises and animal life problems of our society today.

Additionally, I demonstrate that Locke raises the value of human reason to be a moral choice of action in avoiding doing harm to others in spite of the inconveniences to the self. Locke's

moral notion of reason, supported by other natural law origins and the best minds of mankind, shows that we have not yet reached the full potential of our moral reason. As such, we can still raise our own responsibility towards other humans, animals, and the environment. I further demonstrate that, for Locke, when a majority begins to follow reason and acts within natural law limits to ensure the common good instead of heeding their own passions, a general peaceful state of safe and mutual preservation becomes possible.

Many modern authors agree that corrections to the foundation of property law could provide a solid well-based answer to some of society's major problems. At the same time, I also recognise that redefining property will not solve all the problems we face today. For example, the air and water that belong to the common good cannot be defined as property. My purpose was to address at the very least, the major parts of the problems that can be defined by property law.

I am also aware that some authors refer to Locke's property concept as a justification for the taking of the land from Natives who populated the land at the time. This is especially the case in the United States, but I am positive this could not have been Locke's intention. I argue that the Native' use of the land and the environment with the respect to nature and animal life around them would better represent Locke's state of nature during the times of innocent and simple needs with no temptation to desire more than what can be used. However, I do not deal with the problem of taking land in my thesis because my intention is not to demonstrate how Locke's theory was used in the past. I argue against the partial use of Locke's texts and demonstrate how the same problematic property concept can be used today to preserve natural resources and animal life. I thus concentrate on corroborating the validity of Locke's natural law limits from new directions.

My general intention is to demonstrate Locke's morality in different ways as well as his concern for the preservation of the whole of creation. I will demonstrate this via different writings of Locke, the texts of his predecessors, and other sources he used.

Acknowledgments

On my way to complete this thesis, I have experienced many joyous inspiring moments, as well as obstacles. I would like to thank those who gave me the strength and courage to continue and press forward.

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Finally, I thank Locke himself for providing the inspiring hope that one day societies will have a majority of morally rational men and women and also for helping me believe in human nature. I can only hope to do some justice to Locke's moral texts.

My very final thanks is to my loving Father, Dr. Jacob Hiller, for instilling in me the continuous desire for more knowledge, as well as for his endless support. This thesis is dedicated to you.

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1 Introduction

The widespread law of property today allows a selfish and unlimited[1] accumulation of property in material objects, natural resources, and animal life.[2] As such, it disregards the natural law limits on the preservation of the creation as a whole that have always followed human civilization. The juridical-philosophical justification for this unlimited accumulation of property stems from John Locke's (1632–1704) political analysis of property rights in his *Second Treatise*.[3]

Many consider Locke's work to be the classic justification for and protection of private property under natural law. As such, many consider him to be the source of the industrial form of modern capitalism and its unlimited right to property.[4] In particular, Macpherson, Strauss, and their followers claim that Locke succeeded in basing property law on natural law and in protecting the notion that property is individual under natural law and has eternal value. At the same time, they claim Locke succeeded in ignoring natural law limits, instead providing a juridical-philosophical basis for modern capitalism.[5]

The purpose of this thesis is to demonstrate Locke's intent to confirm natural law limits as valid. Locke uses plain language and provides clear examples of natural law limits even after the creation of society. He further insists that it is only with the help of natural law limits on natural resources and living creatures that property law can remain valid and durable, without harming anyone, while balancing the needs of the self and the preservation of others. In a way, Locke not only confirms the validity of natural law limits espoused by the natural law teachers before his time, but also goes further to corroborate, reinforce, and develop such limits as necessary for his philosophy of property to be valid and lasting.

[1] Some minimal limitations can be observed within the eminent domain laws, zoning laws, anti-trust laws, exotic animal laws, and adverse possession laws.

[2] Simmons, (1992), confirms that most current property jurisdiction is based on a wholly conventional basis permitting exclusive rights to property. Simmons, (1992), Ch. 5.3. See also Scanlon, (1976), 'Nozick on rights, liberty and property', within Simmons, (1992), Ch. 5.3. See also Tully, (1980), 171 ("*[T]he particular rights men have in society are conventionally determined, albeit in accordance with natural principles*").

[3] Chan, (1989), 193-201, especially p. 194. See p. 11.

[4] A good review of such authors is in Mitchell, (1986), 291-305.

[5] See, e.g., Macpherson, (1951), 550-566; Strauss, (1953), 165-166, 202-251; Cox, (1960), 76-80; Goldwin, (1987), 451-486; Zukert, (1975), 71-304; Tarcov, (1984), 170; Pangle, (1988), 129-279; Mansfield, (1993), Ch. 24, 181-211. For examples of arguments and references see p. 68.

1.1 **Locke as the subject of this thesis**

1.1.1 Natural law of property as the foundation for the common law of property

It is widely recognized that the politics of Locke's property rights justify the positive (man-made) common law of property. Positive law is "the command of the state," also called governmental law.[6] It serves as the cornerstone of political and classical liberalism.[7] Locke's property doctrine is further regarded as the foundation for U.S. common law of property.[8] Locke's influence is vividly evident in the principles upon which the United States was established: the U.S. Declaration of Independence and the system of public administration.[9] Locke's principles of life, liberty, and property are reflected in the second section of the Declaration of Independence.[10] His principles are further found in the first and second articles

[6] See S.L.R., (1957), 463; see entire text; 455–514.

[7] Political liberalism is a theory founded on the natural protection and rights of individuals favouring a government chosen with the consent of the governed. It protects individuals from the government's arbitrary authority. For a detailed demonstration of Locke's influence, see Gough, (1950), 89; Schlatter, (1951), 151; entire books of Lamprecht, (1918), and; Larkin, (1930).

[8] E.g., the 5th and 14th amendments to the U.S. Constitution states that governments cannot deprive any person of "life, liberty, or property" without due process of law. Post, (1986), 147-157, entire article. For an extended and detailed analysis of the influence of Locke on the founders of the United States, see Dienstag, (1996), 985-1009, especially p. 842 and p. 993. Dienstag demonstrates that the Founders clearly based their system on Locke in every field of politics, corresponding to every aspect of Locke's writings, including trust, consent, state of nature, land, and majority decision. "Founders such as Jefferson and Adams repeated Locke's narrative of a society." Dienstag, (1996), 993. "Under the law of nature, all men are born free, every one comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the author of nature, because necessary for his own sustenance" (Jefferson 1904, 1:474; cf. Locke II, 25-27, cited in Dienstag, (1996), 994). Further, "a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings; that no one has a right to obstruct another, exercising his faculties innocently for the relief of sensibilities made a part of his nature" (Jefferson (1904), 11:522-3; cf. Locke II, 28, 30-31; cited in Dienstag, (1996), 994). Jefferson also specifically endorsed Locke's limit on the accumulation of land—the "as much and as good" principle: "Whenever there are in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labor and live on...If we do not [provide employment to the landless], the fundamental right to labor the earth returns to the unemployed" Cited in Dienstag, (1996), 994. For Hulliung, (2007), the American foundational theory is "not a single theory, for the social contract was not one but several . . . Hugo Grotius and Samuel Pufendorf as well as the more widely recognized John Locke." Even with the acknowledgment of Pufendorf and Grotius, primacy of place is to be accorded to Locke alone." Hulliung, (2007). *The Social Contract in America: From the Revolution to the Present Age*. Cited in Hans, (2009), 448. I compare the three authors on relevant issues throughout this thesis.

[9] See references in footnotes 117 and 118.

[10] "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain *unalienable Rights*, that among these are *Life, Liberty and the pursuit of Happiness*. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed" (emphasis added). Adopted by the Second Continental Congress on July 4, 1776, primarily drafted by Jefferson. Benjamin Franklin, (1868), was in agreement with Thomas Jefferson in downplaying protection of property as a goal of government. It is noted that Franklin found property to be a "creature of society" and, thus, he believed it should be taxed as a way to finance civil society. See Franklin, (1868), 413.

of the Virginia Declaration of Rights, adopted unanimously by the Virginia Convention of Delegates.[11] Locke's theory of property has had a powerful influence on the most important fights to protect natural, individual, and inherent rights against tyranny, such as the American, French, and Spanish revolutions during the 18th and 19th centuries.[12]

According to Powell (1996), in his detailed book on Locke's influence on contemporary property law, "Locke's writings did much to inspire the libertarian ideals of the American Revolution. This, in turn, set an example which inspired people throughout Europe, Latin America, and Asia."[13] The references above to natural law rights originating in Locke's philosophy encouraged me to analyse Locke's philosophy of property.

1.1.2 Locke's pluralistic philosophy of theology and common sense

Locke's fundamental truths based on God's existence pose difficulties for some modern interpreters who might question whether Locke's politics of property, with its repeated theological references, are still relevant today. Gauthier (1977), for example, explains that for Locke, the obligation to obey God is a given because God created man. Gauthier then argues that obligation and creation are not necessarily linked.[14] Arguments based on theology pervade all of Locke's texts and cannot be ignored without due consideration.[15] Locke

[11] Sec. I. "That all men are by nature *equally free and independent* and have certain *inherent rights*, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the *enjoyment of life and liberty*, with the *means of acquiring and possessing property*, and pursuing and obtaining happiness and safety." George Mason, Virginia Declaration of Rights (1776).

[12] See Ibid., Virginia Declaration of Rights (1776), Sec. I and II. See also Article 3 of the UN Universal Declaration of Human Rights*: "*Everyone has the right to life, liberty, and security of person*."* For further examples of this influence of Locke worldwide, see the tripartite motto in France: "liberté, égalité, fraternité" (liberty, equality, fraternity) and in Germany: "Einigkeit und Recht und Freiheit" (unity, justice, and freedom). Zuckert, (1996) cites further charters of rights as the Canadian Charter of Rights, "life, liberty, security of the person*"* (the older Canadian Bill of Rights added "enjoyment of property" to the list). Canadian Charter of Rights, Dyck, (2000). In Australia, it is "life, liberty, and prosperity." See also Constitution of Japan, (1947), Chapter III, Article 13; President Ho Chi Minh's 1945 declaration of independence of the Democratic Republic of Vietnam. Cited in Zuckert, (1996), 18-21. A good review is in Powell, (1996), 45-52 and Katz, (2003), 1-17, entire articles that demonstrate the evident link in the inalienable rights to Life, Liberty, and Property originating in Locke's natural rights. See also Laslett, (1963), 115 and 117.

[13] In continuation of the same paragraph, "Thomas Jefferson ranked Locke, along with Locke's compatriot Algernon Sidney, as the most important thinkers on liberty. Locke helped inspire Thomas Paine's radical ideas about revolution. Locke fired up George Mason. From Locke, James Madison drew his most fundamental principles of liberty and government. Locke's writings were part of Benjamin Franklin's self-education, and John Adams believed that both girls and boys should learn about Locke." Powell, (1996), 45–47.

[14] "From our standpoint the derivation of man's obligation to obey God from God's creation of man requires argument. Creation and obligation are not intrinsically or necessarily connected. But this is the fundamental measure of the difference between Locke's conceptual framework and our own. His framework is theocentric; everything depends on God...No argument from creation of obligation is needed from Locke's perspective." Gauthier, (1977), 43, 132.

[15] See, e.g., Dunn, (1969), 10, 11, 68–188, claiming that, for Locke, from the existence of God, "all else follows."

undeniably and repeatedly references God as the Creator.[16] Locke also supports his theological arguments with the use of revelation from prophets or God in Genesis.[17]

Locke is not worried by a perceived lack of evidence of God's existence; he thought probability was sufficient as the best guidance as knowledge of the world is no more than probabilistic. A sufficiently high degree of probability could qualify as knowledge. He proposes examples of (mere) probabilities that cannot rationally be doubted (i.e., it is highly probable that there was actually a man named Julius Caesar in Ancient Rome). Further, Locke explains that the creation of animal life from brute matter could not be a product of chance without intelligent design.[18] Locke wrote his texts during a transitional period of religious and secular literature; Locke's work suggests that his use of reason supports his use of God because God represents perfect wisdom and reason.[19]

Yet it is important to separate Locke's use of reason from his use of God. While Locke's use of God pervades almost all of his writings, he usually supports his arguments with not only theology but also independent lines of argument that are consistent with many modern schools of secular thought.[20] It is not my intention here to demonstrate the pluralism of Locke's arguments because Simmons did so in detail in his 1992 book *The Lockean Theory of*

[16] E.g., in Locke II, Locke writes, "the law of nature, I.e., the will of God" (Locke II, 135). For Locke, the perfect regularity in nature, including human nature itself, shows that "there must be a powerful and wise creator of all these things." Locke, (1689), *E.L.N.*, Essay 4, Para. 153, See also Locke I, 53. For a good analysis and additional references, see Forde, (2001), 405.

[17] See, e.g., Dunn, (1969), 68, 187, 188; Waldron, (2002), 103–105.

[18] See Locke, (1674), Sec. 4, Para. 110, 113. For a detailed analysis of Locke's use of probability, see Forde, (2006), 232–258.

[19] I.e., in his *Second Treatise*, Locke demonstrates that Adam, as a symbol of God's perfect creation, represents the full possession of reason. "Adam was created a perfect man, his body and mind *in full possession of their strength and reason*." Locke II, 56 (emphasis added). See also Locke II, 57.
Further, Locke writes, "our *Reason* leads us to the Knowledge of this certain and evident Truth, That there is an *eternal, most powerful, and most knowing Being*." Locke, (1689), *Human Understanding*, Bk. IV, Ch. 10, Para. 6, emphasis added).
Moreover, Locke argues that we are bound by divine law based on "The Idea of a *supreme Being, infinite in Power, Goodness, and Wisdom*, whose Workmanship we are, and on whom we depend; and the idea of ourselves, as understanding rational Beings." (Locke, (1689), *Human Understanding*, Bk. IV, Ch. 13, Para. 3, emphasis added).
Modern authors confirm Locke's use of God and reason. Dunn, (1969) says that for Locke, God represents reason: "God is determined by what is best"... "because *his essence is Reason…God is actually reasonable because he is himself pure Reason*." (Cited in Dunn, (1969), 193-194, emphasis added). Dunn, (1969) thus reminds that for Locke, God represents reason. He is pure reason without the corrupted passions of men.
To Ashcraft, (1968), "Locke is drawn into asserting that *God is both reasonable and good*, and hence men are able to adhere to the precepts of natural law not only as respecters of power but also as moral agents." Ashcraft, (1968), 903.
See also p. 145 & p.190

[20] Simmons, (1992), 11.

Rights.[21]I only use this pluralism as the basis for my choice of Locke's political philosophy of property as relevant and applicable in any time period.

As support for my arguments, throughout this thesis, I rely heavily on John A. Simmons, a modern interpreter who comes closest to my interpretation of Locke. On this issue of God and the independent use of reason, Simmons demonstrates that Locke typically supports his arguments with corresponding independent grounds. That is, wherever a theological argument exists, Locke usually provides an independent, non-theological argument based on common sense.[22] A few examples are sufficient to demonstrate my contention that Locke's theory of property is relevant today.

The common property right to earth is supported by reason as it directs us to assume that "once born," we have the right to our own preservation and products of nature for our subsistence; otherwise, we starve to death (Locke II, 25). Alternatively, Locke independently supports this common property right by the "revelation" that God "has given the earth to the children of men; given it to mankind in *common*" (Locke II, 25).[23]

Locke also argues that no one has a right to harm the property of other commoners as God has created us all and no one may harm His creation (Locke II, 6).[24] Here again, Locke provides an independent source of argumentation based on equality: "there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature . . . should also be equal" (Locke II, 5). As equals, we are not to harm each other in life, health, liberty, or possessions (Locke II, 6).

Simmons also demonstrates the plurality of Locke's arguments via property rights without need for consent. He argues that for Locke, it was God's intention to create private property from the original community due to the evident need for self-preservation; thus, no consent is needed for property rights (Locke II, 26, 28). The secular grounds exist in the fundamental principle of no harm to others. No consent is required for the creation of basic property rights if no one is harmed by the appropriation (Locke II, 33).[25] This again demonstrates Locke intention to provide different grounds for his theory so that it is confirmed not only on a theological basis and is indisputable on the basis of reason.[26]

Due to Locke's pluralism, many different theorists of obligation, including Kantians, may agree with Locke's theory of natural law. Indeed, this pluralism may be the only explanation for the diverse and varied political philosophers aligning with Locke's arguments.[27] Tully

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[21] Simmons, (1992), 10–12. "[W]e find in Locke a variety of styles of arguments for moral conclusions, sitting side by side and without an explanation of their differences.... [Locke uses] arguments that are designated to appeal to those who see the secular ends of the state as good in themselves and to those who see them only as means to religious ends." Ibid. 45–46.

[22] Simmons, (1992), 11. This is found within all arguments referring to God and can be explained by the transitional period of Locke's writing (between religious and secular literature).

[23] "Sec. 25. Whether we consider *natural reason*, which tells us, that *men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence*: or *revelation*, which gives us an account of those *grants God made of the world to Adam, and to Noah, and his sons*, it is very clear, that God, as king David says, Psal. cxv. 16. has given the *earth to the children of men; given it to mankind in common*." (Locke II, 25, emphasis added).

[24] "[F]or *men being all the workmanship of one omnipotent*, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they *are his property, whose workmanship they are, made to last during his, not one another's pleasure.*" (Locke II, 6, emphasis added)

[25] See Simmons, (1992), Ch. 5.4, entire chapter.

[26] See more examples demonstrating Locke's pluralism in the chapter on labour within this thesis, p. 143-147, and the right of creation, p. 131, p. 157-163

[27] Simmons, (1992), 48.

(1980) agrees with Simmons, saying that Locke's conceptual connections can be employed in secular moral argument.[28] Forde (2006) also corroborates and demonstrates Locke's independent secular line of argumentation.[29] Many other modern authors support this independence and find a strong secular basis for Locke's arguments on property rights.[30] They argue that the use of theology is not in itself sufficient to reject Locke's philosophy of property rights.[31]

Yet unlike Simmons, Dunn (1969) says that Locke's theological basis of argumentation is the sole important basis for his arguments.[32] He claims that Locke's use of reason is an additional basis of argumentation. He holds that Locke demonstrates "a persistent attempt to establish a rationalist position, worked out in close relationship with natural theology".[33] Dunn thus also recognizes the pluralist argument in Locke.

In my review of Locke, I recognize his different independent bases of argumentation. For example, Locke explains our duty to preserve ourselves, both our kind as well as animals in our possession, "for *men being all the workmanship of one omnipotent*, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they *are his property, whose workmanship they are, made to last during his, not one another's pleasure*: and being *furnished with like faculties, sharing all in one community of nature*" (Locke II, 6, emphasis added).

Locke thus explains these duties in both directions. First, our lives are not given to us by us but by a creator. Our lives are His property and not ours to neglect or destroy. Further, Locke explains the same via the use of reason independent to God's existence. He says we all share similar faculties and capacities in the one community of nature and as such we must preserve not only ourselves but when possible, also others of our kind as well as the community of nature.

I join and use Simmons, Tully, Forde, and other modern authors' pluralism of arguments, which Dunn also accepts. This lets me infer that Locke's political philosophy of property is appealing, applicable, and valid not only to theological schools of thought but also to secular schools and to the majority of contemporary political theorists.[34]

I have chosen Locke due to his principles of natural law as the foundation of common law and the timeless relevance of his theory of property rights as well as their ability to meet contemporary societal needs.

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[28] Tully, (1980), 34.

[29] "Locke seems to go out of his way in the more practical works we have looked at to provide a nonreligious foundation for morality, rooting it mostly in mundane interests of various kinds." Forde, (2006), 258. See also Forde, (2001), 400, 403, 408.

[30] See Sabine, (1937), 518; Rapaczynski, (1987), 117; Pangle, (1988), 201–205. For a good review, see Perry, (1978), 13–14, 55–61.

[31] See Simmons, (1992) confirming that Locke's theory "rests directly on a developed and consistent theory of rights. Not only, then, does Locke's theory of rights serve as a viable foundation for his political philosophy. The *Lockean theory of rights may serve as a viable foundation for ours. For the logical detachability of much of Locke's theory from his theology allows it to function as a consistent development of secular moral theory* (either Kantian or rule-consequentialist) . . . The Lockean theory of rights cannot, I think, be responsibly rejected by the casual dismissal of Locke's theology, which is so common in contemporary discussions of Locke. . .Nor should we any longer ignore the many significant ways in which Locke's insights can today continue to illuminate the liberal rights theories to whose original inspiration Locke contributed so much." Simmons, (1992), 354 (emphasis added).

[32] Dunn, (1969), 68, 187-188.

[33] Ibid. 188.

[34] See Simmons, (1992), 45–46; Waldron, (1988), 142; Ryan, (1984), 22, 24.

1.1.3 The importance of Locke's validation of natural law limits in modern society

The following information explains why I think Locke's natural law limitations could be a good guiding basis for today's societal needs. Today's natural resources have changed drastically since Locke's time, when there were "plenty of natural provisions . . . and few spenders."[35] Land was considered useless if not cultivated, and the use and cultivation of land actually increased the benefit of the common stock.[36]

Today, many ecologists, some of whom are listed in the following paragraphs, conclude that with the increase in population, international industry, and misuse of natural resources for consistent and systematic industrial profit, humanity has taken control over nature. For example, according to Chan (1989),

> "The situation is now drastically different. The western frontier of the last century is gone; population has multiplied; the economy has grown large; and resources are being depleted at an alarming rate. Environmental protection and natural resources preservation take on added urgency. As a result, natural resources management must be approached differently, mindful of these new societal concerns."[37]

Many recognized ecologists agree that there is a need to preserve natural resources, not only for the benefit of future generations but also for our own self-preservation.[38] An increasing number of jurists recognize the deficiency in the current legal system in dealing with the ecological crisis of our time. They argue that society desperately needs to restore the ecological equilibrium,[39] and such restoration requires the legal system to fundamentally change its basic definition of rights.[40]

Many of those jurists try to justify raising animal and vegetation rights to the same level of human rights. Interestingly, they often blame the current positive law definition of property for being the result of the "tremendous advances in material production made possible by the Industrial Revolution" as well as "the political philosophy of John Locke."[41] This also explains my choice of Locke.[42]

Considering the above need for our legal system to redefine the very basis of property, I argue

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[35] Locke II, 31.

[36] Locke says, "[H]e who appropriates land to himself by his labour, does not lessen, but *increase the common stock of mankind"* (Locke II, 37, emphasis added).

[37] Chan, (1989), 193–201. Further, he states, "The Conservation Movement represented the recognition of two opposing trends: declining ability of nature to sustain humanity and simultaneous increasing demands placed on nature by humanity. To head off disaster that could bring about drastic reductions in the standard of living, the policy of wise use and scientific management was implemented." Ibid., 195. See also Barbour, (1980), 26.

[38] Chan, (1989) concludes his very interesting articles as follows: "[F]inally there is the practical question of whether we have any realistic alternative to ignoring nature's right to ecological integrity. Present conditions seem to suggest the negative, for in the final analysis, *we are dependent on a healthy environment for survival*." Chan, (1989), 200, emphasis added. The same view is argued by other well known ecologists like Carson, (1962); Shepard, (1982); Berry, (1988), see entire books.

[39] A good review is in Shirkova-Tuuli, (1998), 1-9.

[40] Stone, (1996), 1–47; Cobb, (1987), 4, 24–25. Good overviews include Berry, (1999) and Culliman, (2003), entire books. Chan, (1989) adds, "What is needed is to recognize that these problems are institutional in nature and that *any solution must involve changing the way property is defined relative to resource use and management*. . . . That would entail a re-evaluation of the human domineering attitude toward nature and a re-examination of humanity's interrelationship with nature" for the purpose of "greater restraints [to] be placed on how nature is treated and how resources are used." Chan, (1989), 193–201 (emphasis added).

[41] Chan, (1989), 194.

[42] As a solid foundation, refer to the arguments of Macpherson and his followers, p. 68.

that Locke's philosophy of property rights, the same philosophy that is considered to be the root of the problem of the positive law of property, can be used to justify the conservation of natural resources. Locke's emphasis on natural law limits justifies government restrictions on wasteful ownership, better management of natural resources, and preservation of animal life. Applying Locke's natural law limits to positive law may cause a rapid evolution in the positive law of property to better protect natural resources and animals.

Locke's use of natural law limits provides a possible answer for how to enjoy the eternal protection of individual property rights while limiting the need for such protection for the self out of respect for the rights of others. Locke's property theory, with its respect for natural law limits, provides solid guidance for the current need of the legal system to better protect natural resources and animal life as well as better preserve a peaceful creation as a whole. This, as I argue in this thesis, is the purpose of the natural law and its limits.[43]

1.1.4 A return to natural law in light of different positive law bases

Many civilizations have been governed using variations of positive law without reference to the superior guidance of natural law and its moral limits for the preservation of mankind. Many people have argued that such disregard for natural law goes against mankind's own interest in self-preservation; this position often is supported with reference to Nazism.

Going back to natural law as a guiding moral law that has followed humanity from its very beginning would yield a solid answer to the current needs of society to better protect the environment, animal life, and mankind itself.[44] The arguments in this thesis are based on the basic idea that natural law stands eternal and superior to positive law, which is to be guided and interpreted by natural law, in accordance with the needs of society. I support this idea with reference to Locke's understanding of natural law as well as his origins. For Locke, natural law is superior and applies even after the creation of governments and their regulation of property rights.[45]

I corroborate this thesis by comparing Locke and his relevant references to Grotius[46] and Pufendorf,[47] whom Locke reviewed for the development of his texts.[48] This helps in the

[43] Locke II, 7.

[44] For a good defence of the use of natural law today, see entire article of Donald, (2011). Find in bibliography under internet sites. See also against the utilitarian movement on p. 209, p. 26 and; footnotes No. 425 and No. 135.

[45] See Locke II, 159; Part 3.1, p. 18.

[46] Hugo Grotius (1583-1645) was widely considered one of the founders of international law and the science of law in general (Pound, (1925), 685), as well as one of the most important representatives in the school of natural law, Aufricht, (1962), 578.

[47] Samuel Pufendorf (1632-1694) was also a great representative of the school of natural law due to his consistent and systematic natural law theory (Pound, (1925), 685).

[48] It is argued that Locke relied on the works of Grotius and Pufendorf on the law of nature. See Laslett, (1963), 74, 137, 142. In 1697, Locke recommended that Lord Mordaunt read "Pufendorf, Aristotle and above all the New Testament." For a confirmation and a good review of the comparison of Locke, Grotius, and Pufendorf, see Olivecrona, (1974), *Appropriation in the State of Nature*, 211-230; this work was the inspiration for the comparison of these authors in this thesis.

corroboration of my interpretation of Locke as based not only on my personal view of Locke's texts but also on the similar views of other teachers of natural law.

Due to the large number of references within this paper and to avoid repetition, I have construed my argumentation to facilitate an understanding of the subject matter. Under each heading, I demonstrate all of Locke's references supporting my arguments from the *Second Treatise* and other Locke sources while analysing the same. This is followed by the modern debate on the relevant problems and as further corroboration, a comparison of the relevant references from Locke's origins.

Some of my arguments have been analysed and re-analysed hundreds of times and interpreted in innumerable ways. This thesis corroborates prior analyses and concludes that Locke emphasised the importance of natural law limits as timelessly while also referencing additional limits. This thesis seeks to demonstrate the importance Locke placed on the responsibility humanity has for all of creation, made evident by his concern for the preservation of others, his moral use of reason, and his use of the state of nature.

2 Central Theses

I divide this work into three central theses:

I. Locke's natural law limits on property, based on reason, are valid in all times. Locke's limits are largely detailed and emphasised for their important purpose of guaranteeing the most fundamental principal of natural law: no harm to others.

For Locke, property is given in common and as such must be preserved for the benefit of the whole creation. Each individual right to property accumulation is protected under natural law and Locke's labour theory.[49] Through the accumulation of property, the shares of other commoners may be harmed. Locke's natural law has the important role of limiting the needs of the self in order to protect the whole and respect the rights of others. For Locke, it is only with the eternal validity of natural law limits that property law can remain valid and durable, without harming anyone, while balancing the needs of the self and the preservation of others' rights to fulfil their needs.

I argue that at times of risk to mankind's preservation, in terms of risk to natural resources and animal preservation, the superior and moral natural law and its limits can and should be used as solid, timeless guidance for the positive law of property because the natural law's purpose is the safe and peaceful preservation of mankind (Locke II, 7).

2.1.1 Locke's natural law limits

"No waste" limitation/capacity of consumption**.** For Locke, each person may accumulate as many perishable products, made for any sort of convenience of life, for any purpose, including for amusement, security, or comfort. However, if this kind of possibly useful product is destroyed or spoiled without being used by anyone, it would be a waste of the common share of others. Property, such as material goods or land, and its products are not to be left to perish without use. "As much as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. . . . Nothing was made by God for men to spoil or destroy" (Locke II, 31).

I argue that for Locke, this limitation remains valid, though some argue it is trumped by the consent of men to use money. I argue this limitation refers only to perishable goods—such as land, fruits, or wool—not to durable goods such as shells, diamonds, gold, or money, which in accumulation, harm no share of others. "[I]f he would give his nuts for a piece of metal, pleased with its colour; or exchange his *sheep* for shells, or *wool* for a sparkling pebble or a diamond, and keep those by him all his life he invaded not the right of others, he might heap up as much of these durable things as he pleased; the *exceeding of the bounds* of his just property not lying in the largeness of his possession, but the *perishing of anything uselessly* in it" (Locke II, 46, emphasis added). Locke is not necessarily against the use of money. There are references indicating that money might be necessary to facilitate exchange and can increase the accumulation of comfort and security without causing harm to anyone. However, this limit is valid as to the perishable products of nature, goods that may be useful for convenience of life, or land bought with money.[50]

"As Enough and as good" left for others**.** This limitation is considered separately for its value

[49] See Locke's chapter on labour from p. 142.
[50] Examples of perishable good that Locke gives are grass, land, and fruits (Locke II, 38; p. 218).

in guaranteeing a person's ability of self-governance without depending on others. This means that in appropriating land, for example, one has to ameliorate the value of this land, ensuring that future commoners will not be harmed for at least a similar use or value of such of the same land. This principle also stands for material goods. Whenever property is taken, it must not be neglected and at the very least must be maintained for the future.[51]

Land. When Locke refers to the appropriation of land, he demands special care for the preservation of land for future commoners. Locke repeatedly refers to "tilling," "ameliorating," and "improving" the land for the "common stock" more with respect to land than with respect to other material goods. For Locke, the appropriation of land is further conditioned not only on the marking of boundaries but also on the continuing cultivation and maintenance or amelioration of the land so that others can enjoy a similar value in the land.[52]

No right to destroy living creatures in possession unless it is for a noble cause. As all were made by the same Creator, no one can destroy him or herself, others, or any living creature in his or her possession unless for a "nobler" cause than his or her own existence—"some nobler use than its bare preservation" (Locke II, 6). Preservation and existence of other living organisms such as animals have recognized value. For Locke, even if living organisms are considered property, the proprietor has the rational capacity to see past mere self-profit for the good of the animal and must care for the existence and preservation of the living organisms in his or her possession. No living organism in possession may be killed for self-interest alone unless for a noble cause. In this thesis, I suggest that such nobility refers to the guidance of reason and natural law limits for the good of all.[53]

II. **Locke's use of reason.** For Locke, reason and rationality refer to more than the mere personal ability to judge facts, individual experiences, and observations. Reason guides the government of certain instincts, passions, and desires of the self while limiting the self through natural law limits. For Locke, reason provides another choice of action, a more moral possibility that serves the good of others despite the conflicting inconveniences of the self. Locke argues that because this moral, rational option is given to all humans above all other life forms known to men, humans are obliged to use and follow it. It is this that distinguishes our nature from other life forms, guiding us to our true, dignified nature. In other words, for Locke, reason encourages us to rise above the mere desires of the self and be guided by moral responsibility to preserve the whole creation (including the animal kingdom and nature), which eventually redounds to the benefit of the creation and mankind, separately.

For Locke, reason was given to all humans in order to be used.[54] He explains that humans are born ignorant to the use of reason yet all possess its capacity.[55] I argue that for Locke, only the full use of rational capacity by governing passions for the good of others is that which differentiates humans and animals.[56] Under Locke's moral use of reason, consulting and following the moral guidance of reason makes a man a fully rational human. The "greater part" of humans cannot be defined as fully rational. Man is simply a more educated but equally selfish animal not guided by moral responsibility for the good of the whole but by

[51] See references in the chapter on limits, on p. 210.
[52] See references and analysis starting on p. 233.
[53] See references and analysis starting on p. 249
[54] References and analysis in the chapter on reason starting on p. 172.
[55] References and analysis starting on p. 175.
[56] References and analysis in the chapter on reason starting on p.172.

pure desires of the self. Animals have no choice but to follow instincts and think about self-preservation. Humans all share the possibility to go above the pure needs of the self and follow natural law limits, respecting the good of the whole, even if it is against the conflicting, immediate passions of the self.[57]

For Locke, the "greater part" of mankind does not respect the true dignity of human nature as desired by the Creator.[58] In other words, mankind still needs to reach a higher level of moral, conscious use of reason for everyday actions, with the liberties and clear limits of natural law for the peaceful preservation of the whole creation, including other humans, animals, and nature. For Locke, humans have to educate themselves to follow reason and better abide by natural law limits, with the prospect that we finally will take responsibility to preserve the whole creation and become fully rational and moral.

III. **Locke's state of nature.** More than being a pre-governmental condition of society, Locke presents different options to his state of nature. Among the options is a possibility for a future peaceful state of equality and mutual assistance and preservation in which people follow reason and natural law limits (Locke II, 7, 6, 19, 128, 111). According to Locke, everyone with rational capacity is able to reach a responsible state of awareness of the whole by consulting and using reason, which each person has the capacity to use. I infer from different references within Locke that a majority, or "greater part," of rational men, consulting reason, can create a collective, self-ordered, peaceful state with mutual affection: in Locke's words, a "state of peace, good will, mutual assistance and preservation" (Locke II, 19).

Locke specifically states that his state of nature is different from a "state of war" or a state of "enmity, malice, violence and mutual destruction"; he proposes a "state of peace . . . a state of good will, mutual assistance and preservation" (Locke II, 19). This allows me to infer that Locke's ideal state of nature is more moral and contains moral rights and obligations as well as reason to guide moral decisions for the whole (Locke II, 4, 128).[59]

To Locke, not following reason may put one in an unsafe state of nature, possibly a state of war (Locke II, 8, 10, 11, 63). "[T]he greater part [of humans are] no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure" (Locke II, 123). Most people are biased by their own interests and passions (Locke II, 12, 124). Within a society, the majority has the right to decide (Locke II, 95–97).[60] This and other references in Locke's texts[61] allow me to look toward the day that human society will contain a greater part of rational men, observing natural law limits, a collective self-order of a peaceful state with mutual affection. This future peaceful option may be also be an interpretation that explains all of Locke's confusing references[62] to his state of nature because Locke provides different options for a future state of nature compared to the fixed state of the past.

The state of nature, thus, is not necessarily doomed to be "unsafe." Rather, Locke implies the possibility, no matter how unlikely, of a future peaceful state of liberties and obligations that, I argue, produce a state of awareness of one's own responsibility to the whole. But the

[57] References and analysis starting on p. 183.
[58] References and analysis starting on p. 89 and p. 92
[59] See references starting from p. 73.
[60] See references starting from p. 92
[61] See possibilityfor a peaceful state, starting from p. 73
[62] See references detailed on p. 67

feasibility of such a future state of nature is irrelevant to my arguments. In such a state of nature, the accumulation of property is protected. Each person could appropriate with "delight" the means for his or her self-preservation and convenience (Locke II, 128) as long as no others are harmed, the same rights are respected for others, and the limits of natural law are obeyed.

Thus, in a way, whether the state of nature is peaceful or unsafe depends on how many persons respect natural law. Locke's ideas for the state of nature are mere descriptions of possibilities. If the world is primarily governed by rational men who respect the limits of natural law, society one day could become peaceful. Otherwise, it is an "unsafe" place often in a "state of war" (Locke II, 19).

2.1.2 Confirmation of the superiority of natural law.

The superiority of natural law is a basic presupposition of natural law among its teachers. For Locke and his influences, natural law is a superior guiding moral law, applicable to all times, according to which positive law is to be applied and interpreted. Positive law is to follow and protect natural law as its higher moral guidance; it should seek the peaceful preservation of mankind against the arbitrary power of the state (Locke II, 7).

3 Locke's Concept of Natural Law

3.1 The concept of natural law and its reflection in the positive law

Historians have observed that since the 19th century, natural law has been used much less in the legal system than it was during the 18th century. Today, the phrases *natural law* or *natural rights* are rarely used in case law.[63] Many lawyers are not familiar with the basic meaning of natural law. This is surprising because to understand the validity of almost any kind of law, one must understand its origins—natural law.[64]

For this reason, I start with an introduction to natural law while emphasising that it is impossible to summarise briefly the history of natural law, which has affected all human civilisations. This will help the reader better understand my interpretation of Locke's natural law as my thesis relies on well-established ideas of natural law.

Natural law, or *the law of nature* (in Latin, *jus naturae*), is one of the founding elements in the history of human rights in general. It is a moral law set by our very nature, or by reason, the understanding of which is common to all humans; it is higher moral guidance aimed at the peaceful preservation of all mankind,[65] discovered by each individual by consulting and using reason. As such, all natural law authors presuppose that it is eternally and universally valid to all men.[66]

Natural law is known to be the moral guiding and binding justification behind positive law. In comparison to positive law, which is drafted by men within the government's authority, natural law is found in each individual through reason. Natural law is understood to have universal validity and applicability to all men, by virtue of the human capacity to reason; its precepts are eternal and unchallengeable.[67]

There are different schools of natural law: The theological school holds God as the only source of the natural law, a divine moral code revealed by God or His prophets; the classical-philosophical school holds that natural law is discovered principally by human reason.[68] The latter believes natural law to be revealed to each individual via the independent use and practice of reason; God's revelation would be independent of reason. For the purpose of this thesis, the most relevant school of natural law is the traditional-classical natural law school, with proponents such as Aristotle, Cicero, Grotius, and Pufendorf. Locke represents the same school of natural law, and the independence of reason makes it relevant in all times.

Nevertheless, even authors of the theological school of natural law agree on the importance of reason, though they hold that God placed it in mankind. They hold that God represents reason

[63] It is argued that this is because of the over-drafting of positive law, the scientific illusion of progress, and the rise of utilitarian philosophy within society (granting the state unrestricted power). However, the latter furnishes no criterion by which actions or laws can be criticised. Moreover, natural law always appears in all human civilizations. See S.L.R., (1957), 455–514, an inspiring summary and analysis of natural law and its relevance to today's lawyer.

[64] For a foundation, see this chapter. "[I]f we are to explain why any kind of law is binding, we cannot avoid some such assumption as that which the Middle Ages made, and which Greece and Rome had made before them, when they spoke of natural law." Brierly, (1949), 57.

[65] Locke II, 7.

[66] Confirmed by Daston, Stolleis, (2008), 70. See also Chapter 3.1, below.

[67] E.g., Rommen, (1936), 221

[68] See S.L.R., (1957), 488.

and created men with full rational capacity. Thomas Aquinas (1265-1274), for example, stated that natural law is a "participation of the rational creature in eternal law."[69] He also stated that natural law is "an ordinance of reason for the common good, made known by those who have care for the community."[70]

In this thesis's chapter on reason,[71] I argue that Locke comes to a similar conclusion about the use of reason for the common good. His reasoning echoes that of adherents to the catholic school of natural law, such as Suarez (1612), who stated that natural law "is inherent in the human mind for distinguishing the virtuous and the shameful."[72] For Luis Molina (1614), the law of nature is "nothing other than *a capacity to reason itself*, instilled in us by nature, through which we discern certain principles, known per se, both in speculative and practical matters."[73] Protestant philosophers such as B. Winkler (1615) described natural law as "*reason* which orders and guides a particular move."[74] Thus, the use of reason is observed in all schools of natural law.

Locke presents both the theological and classical arguments in asserting that God is the representation of reason.[75] This suggests that eventually, there is no practical difference because most authors of the classical school of natural law refer to God. It is independent of the use of reason but is still mentioned. Locke used and reviewed two important teachers of natural law who agree on the use of reason. For Grotius (1625), natural law is "a rule of *moral action*, obliging us to do *what is proper*."[76] Pufendorf (1672) says that "one knows from the *dictate of reason* not only that compliance with the laws of nature is beneficial to mankind, but also that God intends and commends that mortals guide their actions by them."[77]

God is less observed in recent natural law authors of the classical school, but they all agree that natural law derives from human nature and is to be rationally established or tested by reason. Vattel (1747) wrote that "the natural laws are, in particular, those which oblige us by nature or whose basis is to be found in the essence and nature of man and in the essence and nature of things in general."[78]

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[69] Aquinas, (1265-1274), *Summa Theologica*, Part I, Question 91, Art. 2 on 1. Eternal law is the "essence of divine wisdom by which it guides all acts and movements."
[70] Aquinas, (1265-1274), *Summa Theologica*, Part I, Question 90, Art. 1 on 1. See also p. 207, below.
[71] See p. 181 and p. 183.
[72] Suarez, (1612), Lib.1, Cap. 12, Para. 4, Sec. 54.
[73] Daston, Stolleis, (2008), 62–63 citing Molina, (1614), *De iustitia et iure tomi*, Tom. 6, Disp. 47, Para. 3, Col. 1701 (emphasis added).
[74] Winkler, (1615), 66. Cited in Daston, Stolleis, (2008), 62–63. The references on reason in this paragraph are mainly taken from Daston, Stolleis, (2008), 60–70.
[75] See within this thesis p. 9. See also footnote 19 and p. 145.
[76] Emphasis added. Grotius, (1625), *War and Peace*, Bk.1, Ch. 1, Sec. 9, Para. 1.
[77] Pufendorf, (1672), *De iure Naturae*, Vol. IV, Lib. 1, Cap. 6, Para. 4. For other definitions and descriptions of the law of nature, see Thomasius, (1688), *Institutionum jurisprudentiae divinae libri tres*, Lib.1, Cap. 2, 97, 50, ("natural law is a divine law which is written in the heart of all men and which obliges them to do what is necessary consistent with the rational nature of man and not to do what is contrary thereto."), Cited in Daston, Stolleis, (2008), 60–66; Glafey, (1723), *Vernunft-und Volcker-Recht*, 177 ("Divine Laws . . . promulgated thus through reason and known as jus naturae."), cited in Daston, Stolleis, (2008), 60–66; Heineccius, (1738), *Elementa juris naturae et gentium*, Lib. 1, Cap. 1, Sec. 12 ("the law of nature is the embodiment of the laws which immortal God himself has made known through just reason."), cited in Daston, Stolleis, (2008), 60–66.
[78] Vattel, (1747), Part 1, Ch. 4, Sec. 31. See also Chapter 4 on reason.

Through different periods of time, authors have agreed that natural law is based on and derived from reason, requiring personal individual judgment to distinguish between right and wrong, or that which is shameful. The common ideas of classical natural law, from antiquity to Kant, are as follows: (1) natural law is eternal, absolute, and discoverable by reason, valid for all men in all times and in all places;[79] (2) natural law is a body of higher norms or rules securing natural rights;[80] (3) the role of the state is to secure these natural rights for humankind;[81] and (4) positive law is the way by which the state performs this function, and it is obligatory only so far as it conforms to natural law.[82] Theodore Hesburgh, Vice President of the University of Notre Dame, summarises the concepts of natural law commonly agreed on by all schools: (1) its superior origin, (2) its universality and applicability to all men in all times, and (3) its discoverability by human reason.[83]

Many natural law authors, ancient and modern, consider natural law, discovered by a prudent man's right reason, to be the binding law. Cicero defined natural law as "true law" and said, "True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting."[84] For Cicero, true law is correct reason and it sets duties or obligations.[85] The law of nature is the valid moral basis limiting the power of the state.[86]

For some authors, it is a mistake to see natural law as the governing law.[87] They argue that it should be merely an important analytical tool to evaluate and assess positive law under higher, non-legal norms. That is, they see natural law as a guide for whether a law is good or

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[79] Pound, (1914), 623 citing Burlamaqui, (1747), Bk. I, Sec. 1, Ch. 7, Para. 4; See also Wolff, (1738), *Phlosophia practica universalis, pars prior,* 68–69, cited in Pound, (1914), 623.

[80] Pound, (1914), 623 citing Burlamaqui, (1747), Bk. I, Sec. 2, Ch. 4.

[81] Pound, (1914), 623 citing Burlamaqui, (1747), Bk. II, Sec. 1, Ch. 3; See also Wolff, (1738), *Phlosophia practica universalis, pars prior,* 972, cited in Pound, (1914), 623.

[82] Pound, (1914), 623 citing Burlamaqui, (1747), Bk. II, Sec. 3, Ch. 1, Para. 6; See also Wolff, (1738), *Phlosophia practica universalis, pars prior,* 1069, cited in Pound, (1914), 623; Vattel, (1747), Part 1, Ch. 13, Sec. 159, cited in Pound, (1914), 623

[83] See S.L.R., (1957), 459, note 8, citing Theodore Hesburgh, C.S.C. (Executive vice president of Notre Dame University Rev. Epilogue at 162).

[84] Cicero, (54 and 51 BC); "[I]t summons to duty by its commands, and averts from wrongdoing by its prohibitions. . . . It is a sin to try to alter this law, nor is it allowable to repeal any part of it, and it is impossible to abolish entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst punishment." Cicero, (54 and 51 BC), *De Republica,* Bk. 11, Sec. 1. For Cicero, (54 and 51 BC), the basis of law and government is that it is "intrinsic in nature," *lex natura* or *lex naturalis*. Ibid. See also Cicero, (54 and 51 BC), *De Republica,* Bk. 11, Sec. 4; cited in Pound, (1914), 608.

[85] Cicero, (54 and 51 BC), created a legal precedent before a Roman court that held throughout the Western world for two thousand years. He argued that one of the laws of Rome was unlawful, being contrary to natural law: "There is in fact a true law—namely, right reason—which is in accordance with nature, applies to all men, and is unchangeable and eternal." This legal precedent was rarely openly rejected in the West until the twentieth century. See Cicero, (54 and 51 BC), *De Republica*, Bk. 2, Sec. 11; Ibid., Bk. 1, Sec. 58. See also within Donald, (2011), 5, History, Para. 4-6. Find in bibliography under internet sites.

[86] See Pound, (1914), 608. Glafey, (1723), *Vernunft-und Volcker-Recht*, 207, 213, also writes that the law of nature (*ius nature*) is a "genuine law (lex) since God wanted man 'to act in accordance with the rule of nature' and had revealed (it) through reason." Cited in Daston, Stolleis, (2008), 71, who state that according to late-eighteenth-century authors, "non positive laws derived from reason (law of nature lex naturae/naturals)" together with positive law in its various forms. For additional reference, see the heading: Natural law as a guide for positive legal system, below.

[87] E.g., Kunz, (1961), 958.

bad, whether positive law is justified under higher moral standards.[88] Interestingly, even some severe critics of natural law advocate its use in the judicial process, at least to determine a law's meaning, because positive law is drafted under its influence.[89]

As the basis of all common law civilizations, natural law is at the very least an important tool for the moral justification of law and verifies the meaning of the positive law it influences. Some detractors who do not accept natural law as authoritative might argue that it has no meaning for them. However, those detractors are few, and in any event, even strong opponents such as Bergbohom (1982) note that "all men are born natural law jurists."[90]

I demonstrate under this thesis that even supporters of strict positive law who insist on ignoring natural law or call it "nonsense upon stilts"[91] also recognize the use of reason, which is the basis of natural law. I join Fuller (1954) who noted that some parts of natural law can be found even in systems that are most opposed to it.[92] Similarly, Frank (1949) spoke of natural law as absolute rights deriving from our very nature that cannot be refused to be adopted: "I do not understand how any decent man today can refuse to adopt, as the basis of modern civilization, the fundamental principles of Natural Law, relative to human conduct as stated by Thomas Aquinas."[93]

3.1.1.1 Natural law traces in all human civilizations

It is not my purpose here to review natural law manifestation throughout history, for many others have done so already.[94] I merely intend here and in following sections to demonstrate that natural law has followed mankind since the inception of human moral civilization. As such, as Locke also suggests, natural law and its limits are solid moral bases for the guidance and interpretation of positive law.

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[88] S.L.R., (1957), 496.

[89] See, e.g., Beutel, (1952), 167–169; Dennis v. United States (1951), 341 U.S. 494, 508 ("The trouble with Mr. Justice Vinson's argument is that the founding fathers, being disciples of the natural law, believed in absolutes. . . . whether one likes it or not, the natural law theories of absolute truth have exerted a tremendous influence upon our law makers and the drafters of our Constitution. Natural law absolutes have found their way into the very structure and fabric of our legal system). Beutel, (1952), supra at 168–169. Here, Miss Silving says: "[The] doctrine of natural law . . . calls for technical utilization of that doctrine as a carrier of a legislative message. . . . Silving, supra at 485. 11. 12. Cited in S.L.R., (1957), 496.
The interpretation of the 14th amendment, as found in Brown v. Board of Educ. (1954), 347 U.S. 483, 38 A.L.R. 2d; p. 1180 is criticised, although agreeing with the result. "'[T]he taboo against natural law, extending even to its acceptance as a historical fact expressed in positive legal enactments is unjustified. . . .' Silving, supra at 486 n.14. Cited in S.L.R., (1957), 496. Natural law may also be legislatively enacted as a principle of construction. See, e.g., Cal. Code Civ. Proc. 1866 (West, 1955): "When a statute or instrument is equally susceptible to two interpretations, one in favor of natural right, and the other against it, the former is to be adopted.' Last cited by a California court in Estate of Lund (1945), 26 Ca1. 2d 472, 492, 159 P.2d 643, 654'." Cited in S.L.R., (1957), 496.

[90] Rommen, (1936), 266, quoting Bergbohom, (1982), *Jurisprudenz and Rechtsphiosophie*.

[91] I also argue that the phrase "nonsense upon stilts" is taken out of context, p. 208. Even according to strict utilitarian (state power only) philosophy, reason is used. See p. 207, below.

[92] Fuller, (1954), 457, 461. See also Brown, (1939), 9–11.

[93] Frank, (1949), *Law and the Modern Mind*, xvii. See also Frank, (1949), *Courts on Trial*, 346–371, cited in S.L.R., (1957), 489.

[94] E.g., S.L.R., (1957), 455-514, especially, 459–461, 463, note 16, note 20. The following sections on the higher guiding role of natural law are inspired by this review, which defends natural law with an outstanding number of citations and examples of case law. I refer only to relevant references that I verified while adding supporting references. Note that the following references are not decisive of the superior place Locke gives to natural law because Locke's words are clear enough on this. The purpose is a general defence of natural law with references demonstrating natural law's actual influence as a basis for positive law within different civilisations over time.

Since the dawn of human civilization, the concept of a higher moral law has been found clearly in almost all cultures, religions, and traditions that rely on moral values. It can be found within the Jewish, Christian, Muslim, Hindu, Buddhist, and Chinese traditions.[95] Natural law is clearly reflected in the writings of St. Augustine and other church fathers and generally is considered integral to church doctrines.[96] Natural law exists within Ancient Greek[97] and Roman[98] philosophies. It was incorporated by reference into the law of the Roman Empire under the Institutes of Justinian (533 A.D.) and the Digest (533 A.D.).[99]

Natural law is recognized specifically as the basis for the development of English common law and the English Enlightenment.[100] It also is recognized as an important foundation of the political and common law development of the United States[101] while forming the basis of international law.[102] Natural law's influence can be observed within canon law.[103] In Europe,

[95] E.g., on Judaism; Novak, (1998), 117; Corbin, (1957), 39, is in association with Islamic Publications for The Institute of Ismaili Studies (Muslim). Asian Indians deify natural law as *Dharma*, "The Right Way." For the Christian tradition, see footnote 96. For a good review of natural law in religions, see Strauss, (1953), 81–119, note 7.

[96] E.g., Burns, (2000), 929–946; Aquinas, (1265–1274), *Summa Theologica*, Part I-II, Question 90-91, Art. 1, 2, 4; D'Entrèves, (1951), 52–53. See also Chroust, (1950), 285; Chroust, (1946), 2. Also, S.L.R., (1957), 459-460.

[97] See Wild, (1953), 136; Doyle, (2010), 508; Howland, (1993), 428, 517, 518, 540; Plato, (385-380 BCE), *The Symposium*, Para. 205e–206a, 211d–e; Aristotle, (350 BC), *Nicomachean Ethics*, Bk. VII, Ch. 1; Donald, (2011), 3, Para. 8-10 (find in bibliography under internet sites); Le Bel, (1949), entire Proc. 3; Wormuth, (1948), 45. Within this thesis see also p. 198 and p. 197 below. See further, S.L.R., (1957), 459.

[98] E.g., Cochrane, (1957), 39; Levy, (1949), entire Proc. 43. See further, S.L.R., (1957), 459-460. See also Roman references mentioned within this thesis, p. 153.

[99] Justinian, (533 AD), Bk. 1, Title 1, Sec. 3. See references within this thesis, p. 153. For confirmation see Schulz, (1936), 35.

[100] See, e.g., McIlwain, (1932), 185; McIlwain, (1947), 71–89; Thorne, (1968), Vol. 1, Sec. xxxiii; Coke, (2003), Vol. 1, xxvii.; Bracton, (1981), 22–23; Hazeltine, (1949), 1, xxviii; Sandoz, (1993), 7; Fortescue, (1949), 11; Muddiman, (1928), 235; Doe, (1990), 49, 112, 113, note 23; Reid, (1977), 71; Lewis, (2004), 108-109. Many other sources indicated within; S.L.R., (1957), 460, footnote 16.

[101] See footnotes 117–119, below.

[102] Stone, (1954), 498.

[103] "The canon law of the Roman Catholic Church is an old and developed legal system of the Roman type, resembling in most respects to other positive systems of law. It is an interesting example of a positive law system which is extremely conscious in its applicability to the natural law, applying its rules by methods similar to those of the old English cases. It is 'open to' the guidance and normative force of Natural Law on every level of legislative and jurisdictional activity." Kuttner, (1950), *Natural law and canon law*, 85, 116, cited in S.L.R., (1957), 460, footnote 15.

many lawyers have tried to unify the rules of natural law while in other countries, natural law was drafted into positive law.[104] Natural law's influence can be observed further in modern European constitutional law.[105]

More examples are in the following sections. For now, I only remind that natural law was always taught in the greatest universities while specifically being used and referenced for the development of the common law.[106] Natural law has been used as the basis for moral philosophy throughout history. European and English political philosophers such as Sir Edward Coke, John Locke, Baron Charles de Montesquieu, and Sir William Blackstone are only a few. The list of natural law philosophers continues; traces of natural law in moral codes are found in any human civilization with moral values.

3.1.2 "Higher" role of natural law as reflected in positive law

Most natural law authors argue that it is superior to positive law, and is its foundation. Positive law must be in conformity with natural law so that it can better protect natural rights.[107] Classical natural law philosophers express the superiority of natural law over positive law in three ways:

I. Natural law provides a binding, moral justification for positive law.[108]

II. Natural law sets objectives within the legal system. "Since the common good and reason are essential elements of law and its purpose and justification, laws may be and must be measured against these standards and conceived and administered in light of them."[109]

III. Finally, natural law provides limits: "Since . . . positive law derives its binding force from natural law, natural law is in a very real sense a 'higher law,' and the contravention of natural law principles by positive law may destroy its binding force."[110]

Natural law is a guide in decision making when positive law conflicts with a natural law maxim and where the positive law is vague and needs clarity based on the principles from which it was constructed.[111] In one way or another, natural law still comes into play in the positive legal system, including court decisions.

In general, natural law authors aspire for the application of natural law in positive law. Rommen (1936), for example, noted, "Under a constitutional, free government with the added safeguards of a bill of rights there exists a strong presumption that the positive law is a

[104] It is argued that after 1780, eight or more new systems of natural law appeared at every Leipzig bookseller's fair. See Rommen, (1936), 106. But there was never a unanimous agreement on the unification of natural law.
[105] See Dietze, (1957), *Judicial Review*, 55, 539; Dietze, (1956), *European constitutions*, Vol. 1, Forum 73.
[106] Ibid., note 100.
[107] See, e.g., S.L.R., (1957), 484, 486–487, 511–512. Again, this source inspired the multiple references in this section that I have verified.
[108] Bayne, (1956), 159, 191–92; S.L.R., (1957), 484, 486
[109] S.L.R., (1957), 484 citing O'Meara, (1956), *Forward*, Natural Law forum, Vol. 1, No. 1–2.
[110] Bayne, (1956), 198–99; S.L.R., (1957), 484, 486
[111] Natural law is referenced in positive law "(1) in legislation or decision-making; (2) in cases where the positive law is definite and contravenes the natural law, or (3) in cases where there is some indefiniteness in the relevant positive law and a determination of a particular case must be made." S.L.R., (1957), 486–487. See also § 7 of the Austrian Civil Code for an explicit reference to natural law.

determination and a derivation of the natural law."[112] He also argued, "Our idea is that Natural Law really shouts for its positive concretization."[113]

As the above suggest, no matter how one considers the importance of natural law, it is, in any event, recognized as the guiding basis of positive law that one must return to for any possible understanding of meaning.

3.1.3 Natural law as a guide for positive legal systems

It is not my purpose here to outline all case law incorporating natural law; that has been done sufficiently in the past.[114] "Historically, natural law has played an important part in the development of our jurisprudence and of our case law. Innumerable cases are to be found in our courts in which natural law is explicitly or implicitly employed as the basis of decision."[115] Here, I mention a number of cases to evidence the importance of natural law and its reflection as a guide for positive law.

In England, natural law is argued to have taken part in the development of common law while leading to the declaration of rights, the Glorious Revolution, and the English Enlightenment.[116] Natural law is argued as the very basis for the American Revolution and the U.S. Bill of Rights.[117] During the United States' first century as a nation, natural law was considered the key principle of government, even by the Supreme Court.[118]

According to Madison, the Constitution is a product of "the transcendent law of nature." As Jefferson noted, it is a product of "the moral law to which man has been subjected by his Creator, and of which his feelings, or conscience as it is sometimes called, are the evidence with which his Creator has furnished him. The moral duties which exist between individual and individual in a state of nature accompany them into a state of society, . . . their Maker not having released them from those duties on their forming themselves into a nation."[119] Jefferson called natural law "moral law" and emphasised that the moral duties existing in the state of nature are also to be reflected in government.

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[112] S.L.R., (1957), 511 citing Rommen, (1936), 262.

[113] Rommen, (1948), 40, 52. Kenealy, (1955); "[T]he classical natural law philosophy teaches, as one of its prime tenets, that the natural law and its fundamental principles are inadequate to solve the complex problems of human society. *The natural law demands implementation by civil law*; and such implementation frequently involves, not merely research and argumentation, certitude and probability, but also trial and error experimentation." Kenealy, (1955), *Whose Natural Law?* 259, 266 (emphasis added), cited in S.L.R., (1957), 482.

[114] See Bayne, (1956), 216; Haines, (1916), 617; S.L.R., (1957), 461–462, 487, 495, 499, 502, 504–505, 507, 509, 511. Many references in this heading are taken, after verification, from the latter source.

[115] S.L.R., (1957), 495.

[116] See footnote 100.

[117] Post, (1986), 147–150. For an extended and detailed analysis of the influence of Locke on the American Founders, see Dienstag, (1996), 985–1009. See also Becker, (1922), 27; Pangle, (1988) 129, 279; Zuckert, (1996), 18-21; For a good review see entire books of Zuckert, (1998) and; Zuckert, (2002). "[T]he spirit of the book was well in accord with the principles of the Declaration of Independence" and "quite naturally met with the favourable disposition of a public whose most influential philosopher was John Locke." Nussbaum, (1954), 161. See also Rabkin, (1997), 305 (demonstrating the influence of Locke on the declaration of Independence). For many other references, see S.L.R., (1957), 461, note 20.

[118] E.g., Brewer, (1893), 37, 46; Hunado v. California (1884), 110 U.S. 516, 536; Butcher's Union Co. v. Crescent City Co. (1884), 111 U.S. 746, 758-59 (concurring opinion) 746, 758–59; United States v. Cruikshank (1875), 92 U.S. 542, 554, Chicago, B. & Q.R.R. v. Chicago (1897), 166 U.S. 226, 236–238; Loan Ass'n v. Topeka (1874), 20 Wall. 655, 663; Holden v. Hardy (1898), 169 U.S. 366, 387, 389. Cited at S.L.R., (1957), 462, notes 22–30.

[119] Jefferson, (1826), Part 3, 228.

The common law of the United States is declared to be based on "the preexisting and higher authority of the laws of nature."[120] Indeed, natural law is reflected in nearly every field of positive law today. For example, "positive laws, including tax laws, must obviously be consistent with, and not contrary to, the principles of natural law and accordingly it is proper to say that tax laws must be subject to, and limited by, the natural law principles upon which such laws are ultimately founded."[121] With natural law limits, taxes are to be imposed only "for a just purpose, namely the necessity of the government, so that they are either immediately or mediately connected with the *common good*, and proportioned to the current necessity."[122] Natural law is also clearly evident in domestic relations.[123]

The application of natural law to property rights and the right to contract concerning that property is reflected in a case often studied by students of American constitutional law.[124] In 1950, Judge Hutcheson held that the right to property drives from natural law. As such, it cannot be inconsistently dealt within the positive law. "[T]he right to acquire and own property, secured and protected in and by our constitutional form, though it is now a right by positive law, is also, and primarily, a natural right having its origins and basis in natural law, and that, as such it may not justly be abrogated, unreasonably abridged, or inconsistently dealt with by positive law."[125]

The origins of the right of property thus are recognized to derive from natural law and human nature. "*The institution of private property is of natural law*. In the long run man cannot exist,

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[120] The West River Bridge Company v. Joseph Dix (1848), 47 U.S. 507, 532.

[121] The Committee on State and Federal Taxation (1948), Section of Real Property, Probate and Trust Law of the American Bar Association issued report (1949), *The Moral Issue*, 27 Taxes 9; See in S.L.R., (1957), 502.

[122] Emphasis added. Ibid. at 9-11 ("a due proportion to the wealth of each citizen must be observed").

[123] See, e.g., Seidenberg v. Seidenberg (D.D.C. 1954); (1955), 126 F. Supp. 19, 23, affirmed, 225 F.2 d 545. "The family is the foundation of society. The duty of a married man to support and protect his wife and children is *inherent in human nature. It is a part of natural law*, as well as a requirement of the law of every civilized country." (emphasis added); Leith v. Horgan (1953), 13 N.J. 100, 467, 473; A.2d 175, 17 (saying the right of communion between parent and child "is *a natural right* grounded in the strongest ties of blood. . . . Marital well-being depends upon mutual forbearance and concessions to emotional yearnings and aspirations *founded in the natural law* and humanitarian promptings and impulses.") (emphasis added); Soderno v. Soderno (Sup. Ct. 1945), 56 N.Y.S. 2d 823, 827 ("*By the natural law, the unity of the matrimonial bond* and its indissolubility and permanency are essential properties of conjugal society. Polygamy is opposed to the unity of the bond.") (emphasis added); People ex rel. Portnoy v. Strasser (1952), 303 N.Y. 104, 539, 542; N.E. 2d 895, 896. ("No court can, for any but the gravest reasons, transfer a child from its natural parent to any other person . . . since the *right of a parent, under natural law*, to establish a home and bring up children is a fundamental one and beyond the reach of any court.") (emphasis added). Interestingly, the language from Portney was quoted in People ex rel. Kropp v. Shepsky (1953), 305 N.Y. 113, 465, 468; N.E. 2d 801, 803, with the phrase "under natural law" deleted. See also Matter of May (1953), 305 N.Y. 486; 114 N.E. 2d 4, discussed above in note 3; cited in S.L.R., (1957), 507.

[124] See, e.g., Children's Hospital v. Adkins, 284 (D.C. Cir., 1922), "It should be remembered that of the three fundamental principles which underlie government, and for which government exists, the *protection of life, liberty, and property*, the chief of these is property." (emphasis added).

[125] Hutcheson, (1950), Proc. 45, 55, reprinted in (1951), Proc. 26, 640, 648. See pp. 487–88 supra, chief judge of the United States Court of Appeals for the Fifth Circuit, speaking on p. 195. In certain cases, Supreme Court recognises the power of the state to limit the needs of self for the good of others, such as by abolishing the right to inheritance. "Rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and the dead hand rules succession only by sufferance. *Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction*." See Irving Trust Co. v. Day (1942), 314 U.S. 137, 556, A.L.R. 1093 (emphasis added). This is approved in Demorest v. City Bank Farmers Trust Co. (1944), 321 U.S. 36, 48 by Justice Brown, who recognises the statutory character of testamentary disposition. See also United States v. Perkins (1896), 163 U.S. 625, 628; cited in S.L.R., (1957), 504–505.

cannot make good his right to marriage or to a family or to security of life, and cannot maintain his sphere of individual right to a life of his own, unless he is entitled to ownership through the acquisition of goods. The right to private property *follows from the physical, ontological make-up of the individual person, from the body-spirit nature of man*."[126]

Judge Robert Wilkin confirms that natural law continues to be employed in courts in many legal fields and that one cannot deny its existence without denying the existence of human nature, for natural law is incarnated within.[127] Moreover, Wilkin adds,

> "As a result of ten years of experience as a trial judge in a United States District Court I am convinced that such assertions [that natural law is impractical, idealistic, and has no place in the actual administration of positive law] are not true. . . . The principles, standards, and precepts of Natural Law are continually employed by courts as the constitutions, statutes, and precedents are interpreted and applied to the ever-varying circumstances of life. They are employed also in the interpretation of wills, contracts, conduct and relationships of life. They are part of man's nature and cannot be separated from his life."[128]

The above referenced case law applying natural law as a guide demonstrates the superior role of natural law, at least as the foundation of the positive legal system.[129] This demonstrates that natural law is not only a higher guiding ideal but also reflected in the foundations of the common law.

3.1.4 Apparent revival of natural law during the 20th century

The harsh observations of World War II and the use of nuclear weapons and other incomparable cruelties towards members of humanity, authorised and conducted under the positive law of governments, demonstrated the serious dangers of giving absolute state power without any moral restrictions. Among other atrocities, millions of humans (primarily women and children) were arbitrarily and systematically exterminated in massive industrial death factories designed for maximum killing efficiency created under the positive law of the

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[126] S.L.R., (1957), 505 citing Rommen, (1936), 233 (emphasis added) and Rommen, (1936), 235–236 ("the legal institutions of private property and inheritance are of natural law."); Bayne, (1956), 159, 206–208; Brown, (1951), *Human rights and the State,* 536–537, cited in S.L.R., (1957), 505.

[127] Judge Wilkin's decisions cited by Professor Goble, (1956), 226, 233.

[128] Wilkin, (1949), 125, 147. In Hayes v. Cmtcher, Wilkin held on the basis of Plessy v. Ferguson, "It seems that segregation is not only recognized in constitutional law and judicial decision, but that it is also supported by general principles of natural law." Hayes v. Cmtcher (1952), 108 F. Supp. 582, supra at *585* at 586.
Plessy v. Ferguson (1896), 163 U.S. 537. The language used throughout suggests "natural rights." See pp. 487-88 *supra.*

[129] As further evidence, many articles have been written about the reflection of natural law within case law: administrative law (Schwartz, (1953), 169); eugenic sterilization (Gest, (1950), 306); criminal law (Katz, (1955), *Natural Law and Human Nature*, 1, cited in S.L.R., (1957), 509), Bankruptcy and statute of limitations (Burke (1949), 47, 65, 67, 73–79, cited in S.L.R., (1957), 509); right-to-work laws (Falque, (1956), 201; Fitzpatrick, (1956), 308; Keller, (1956), 198 & 190, all cited in S.L.R., (1957), 509). For a detailed analysis of those articles and case law, see S.L.R., (1957), 509. See also Hutcheson, (1950), entire Proc. 43. See also Thompson v. Consolidated Gas Util. Corp (1937). The district judge whose opinion was affirmed in this case is Chief Judge of the Fifth Circuit, Hutcheson, (1950), see entire Proc. 43. For additional cases, see S.L.R., (1957), 487, 494-507.

government.[130]

The wars of the 20th century demonstrate that without well-established moral limits, as provided by natural law, the power of the state can be misused against the rights of members of humanity and risks the preservation of mankind. In the name of the state, individuals no longer find protection of their natural individual rights and can lose their most basic natural rights, even the right to live. History demonstrates that it is against the preservation of mankind to give limitless power to the state without any moral limits with respect to individuals.[131]

The need for natural law revival is based on the need to strengthen universal public moral standards. After the wars of the 20th century, natural law language returned as the only well-established moral basis to fight the abuse of the state through positive law.[132] Natural law is the only well-established, long-lasting moral philosophy, agreed upon by some of the best minds of humanity, throughout the history of civilisation, that is able to limit the power of the state out of respect for absolute individual rights, discovered by reason.

There are an increasing number of modern authors supporting the need to revive natural law in order to avoid the abuse of the state power that has proven detrimental to mankind's preservation.[133] Kunz (1961), for example, claimed that "in a period in which our occidental culture is fighting for its very survival, it seems necessary for its protagonists, and hence its international lawyers, to strongly reaffirm the supreme values and ethical norms of that civilization."[134] Fuller (1939) also argued that there is a current need to re-examine the basic principles of natural law in order to better apply positive law: "[T]he future of American law in general, and of the law of contracts in particular, lies not along the lines of an even more rigidly controlled and 'scientifically' accurate statement of the law of the cases, but in a philosophic re-examination of basic premises."[135] Examining Locke's natural law limits could

[130] "[T]he power of the state had been utilized in our time to deny and to crush every human right which our society guaranteed and cherished. These decades have seen . . . the glorification of war and violence, the utter disregard of treaty obligations, the concentration camps and a multitude of other horrors, often authorized by the positive laws of the state. Hitler particularly made a point of the scrupulous observance of legal forms." S.L.R., (1957), 463.

[131] S.L.R., (1957), 463, 466. Positive law systems of government that do not recognise natural law provide no higher moral security and criticism concerning the power of the state. The "positivist" definitions of law such as "the command of the state" or "a prediction of what particular governmental organs will do in given situations furnish in themselves no criterion by which these actions or laws can be criticized" Ibid. 463. See also S.L.R., (1957), 467–469, 471–472, 490–492, notes 132–152. The following section is inspired by many of the references mentioned, after being verified, while adding others, demonstrating the need to revive natural law. For additional counterarguments against the utilitarian movement, see p. 209, footnote 425; and the introduction, p.12.

[132] See Fuller, (1954), 457, 472-473; S.L.R., (1957), 491.

[133] E.g., Mortimer Adler, former professor of philosophy at the University of Chicago and present director of the Institute for Philosophical Research in San Francisco; Emil Brunner, chancellor of the University of Zurich; Alexandre Passerin d' Entrèves, professor of Italian studies at Oxford University; Hallowell, professor of political theory at Duke University; Walter Lippmann, political news columnist; author Jacques Maritain, French philosopher and diplomat, presently in the philosophy department of Princeton University; Heinrich Rommen, professor of political science at Georgetown University; Leo Strauss, professor of political theory at the University of Chicago; John Wild, professor of philosophy at Harvard University; Sir Ernest Barker, professor of political theory at Cambridge University. Their texts, with detailed references, are found in S.L.R., (1957), 466-469, 471–472, notes 41, 45, 68.

[134] Kunz, (1961), 951.

[135] Fuller, (1939), 11, cited in S.L.R., (1957), 492. Donald, (2011) also defends the revival of natural law and approves natural law historical examples, stating that "the failure of Critias (Socrates disciple's experiences) showed that the rule of law, not men was correct. The success of the Dutch Republic showed that the medieval understanding of natural law was sufficiently accurate . . . . Netherlands came to be governed predominantly by natural law, rather than by men or by customary law. . . . During decolonization the U.N. created governments in

be a good way to re-examine the basic premises of natural law and apply them to the positive law of today.

Case law, including some decisions of the High Courts of Western Germany and in modern international law, also demonstrates the increasing interest in natural law and its re-appearance in modern European constitutions. An example from a criminal case:

> "The freedom of a State to determine, within its territory what shall and shall not be law, is not unlimited. Notwithstanding all differences that exist between municipal legal systems, there is in the consciousness of all civilized nations a certain central core of law which, in common legal opinion, must not be violated by any statute or by any other authoritative action. It comprises *certain principles of human conduct*—developed in the course of time by all civilized nations on the basis of concurrent ethical ideas—which are *deemed inviolable and legally binding even where the legal system of a particular State does not expressly exclude them from the area in which the State may exercise arbitrary power*."[136]

German courts consistently held that Nazi discriminatory legislation was not law.[137] This is important legislation demonstrating that what is contrary to natural law is not legitimate law (even if permitted in the legal system) so that any other law that discriminates against groups of individuals could be clearly judged not to be law.[138] Even before this recent natural law revival, natural law was used as the source of law for interpreting meaning in nearly every field of positive law.

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accordance with this false idea, the idea that all a state required to exist was firepower superior to that of private citizens, . . . As a result of this false idea, in the third world and in the former soviet empire, a number of governments have collapsed or are close to collapse. . . . Many states have attempted to use something other than the civil society to provide the glue that hold them together. . . . Some have succeeded for a time, usually by using religion or the personal charisma of the leader in place of civil society. . . . The state does not hold civil society together. Civil society is not a creation of the state. The state is a creation of civil society. . . . Rulers that use something other than civil society to provide cohesion for their states are in practice a danger to their neighbours, and an even greater danger to their subjects. For this reason civil society is the only legitimate material from which a state may be made. A state based on something else is illegitimate. . . . History has shown that not only was Locke correct factually, he was also correct morally. Not only are states normally based on civil society, they should be based on civil society." Donald, (2011), 17-18, Civil Society and the State, Para. 8-13 (find in bibliography under internet sites). This is supported by Locke, who said, "For he that thinks absolute power purifies men's blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary." Locke II, 92. Locke suggests that absolute state power has proved to be problematic throughout history.

[136] Judgment of Bundesgerichtshof (Dec. 19, 1952), 3 Entscheidungen des Bundesgerichtshofes in Strafsachen 358, 488–489, note 18, (emphasis added). After the war in Germany, natural law began playing an important role in case law. See Dietze, (1956), *Constitutional Norms?*, 42, note 1, a recent German federal constitutional court case which, in dicta, admitted the possibility of federal constitutional provisions being declared invalid as opposed to natural law principles. See Judgment of Bundesverfassunsgericht (Dec. 18, 1953), 3 Entscheidungen des Bundesverfassungsgericht 225; Taken from S.L.R., (1957), 466.

[137] See Bodenheimer, (1954), 380, 387–391 (discussing cases), see also in S.L.R., (1957), 466.

[138] Natural law jurisprudence is of much interest in Italy and Germany. With reference to Germany, see Bodenheimer, (1954), 379, see also in S.L.R., (1957), 466. See also Fuller, (1954), 457, 481–485; Banner, (1953), 218; Dulles, (1948), 'Which way to world peace—Revolution or reform?', 7, cited in S.L.R., (1957), 467. The Natural Law Institute of the University of Notre Dame presents annual conferences and has recently initiated the publication of a periodical entirely devoted to the study and discussion of the philosophy of law, the *Natural Law Forum*. Notre Dame is working towards the application of natural law to substantive law courses so that the students will develop the habit of looking at legal problems and issues in light of the philosophical background. See Brown, (1938), 163 and Feeney, (1950), 646. See further, S.L.R., (1957), 467.

3.1.5 The superiority of natural law within Locke

For Locke, the law of nature is superior to the positive law made by men. Locke thus sees natural law as a superior, divine, moral law, applicable to all times.[139] Below are some of Locke's references to the superiority of natural law. This will follow the modern debate on the relevant issues and corroboration from similar views by Locke's predecessors. In one of the clearest references to the superiority of natural law, Locke states that the duties of the law of nature do not end with society, but are "drawn closer" by society:

> "The *obligations of the law of nature cease not in society, but only in many cases are drawn closer,* and have by human laws known penalties annexed to them, to enforce their observation. Thus the *law of nature stands as an eternal rule to all men, legislators as well as others*. *The rules that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature*, i.e., to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind, no human sanction can be good, or valid against it." (Locke II, 135, emphasis added)

Thus, natural law limits prevail over any human governmental law and are valid for every man, including rulers. Governments are to apply natural law and give penalties in order to better enforce its obligations. The obligations of natural law are not to end with the creation of society but are to be drawn closer to it. This could be used as a clear reply to Macpherson and his followers, who say Locke's natural law obligations end with the creation of society.[140]

Additionally, for Locke, positive law is valid only if it confirms natural law:

> "[Y]et, it is certain there is such a law [law of nature], and that too, as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of commonwealths; nay, possibly plainer; as much as reason is easier to be understood, than the fancies and intricate contrivances of men, following contrary and hidden interests put into words; for so truly are a great part of *the municipal laws of countries, which are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted*" (Locke II, 12, emphasis added)

Locke emphasises that the law of government is founded on natural law, and as such, the law of government is to be regulated and interpreted according to natural law. Thus, positive civil law must be "made conformable to the laws of nature."[141] For Locke, even if the law of nature is "intelligible and plain to a rational creature," it might not be clear to those who do not follow the law of reason due to "fancies and intricate contrivances of men, following contrary and hidden interests" (Locke II, 12 above). As such, the civil government's role is to protect the law of nature from misapplication.[142]

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[139] Locke II, 135.

[140] See modern debate below. Further, in the same paragraph, Locke states that the superior place of the law of nature is well indicated to prevail if a government promotes the common good. Otherwise, the government is not perfect. To demonstrate this, Locke says that "the sacred laws of his nature; in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions, that they *be no hindrance unto the common good, for which societies are instituted. Unless they do this, they are not perfect*. Hooker's Eccl. P01.1. i. sect. 10." Locke II, 135 (emphasis added).

[141] See also Locke I, 92.

[142] See analysis of this paragraph on p. 178, p.32, and p. 177

Tully (1980) used this specific reference (and two others mentioned below) to show that positive law is to be guided and interpreted by natural law:

> "[T]he *municipal Laws of Countries . . . are only so far right, as they are founded on the law of Nature, by which they are to be regulated and interpreted*" (emphasis added, Locke II.12), natural law states eternal guideline to and ultimate justification of, legislation and that . . . legislators are entrusted to regulate this power in accordance with natural law (Locke II.135). If they do not so regulate it, but abuse it arbitrarily, they transgress the law of nature, and men regain the natural power to exercise their natural rights." (Locke II.149)[143]

It is indeed mentioned within Locke that if governmental laws do not regulate natural law, but abuse it arbitrarily, they transgress the law of nature, and men regain the natural power to exercise their natural rights: "legislative being only a fiduciary power to act for certain ends, *there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them"* (Locke II.149, emphasis added).

Ashcraft (1986) also used this reference to claim that when a governmental law is out of order, one must turn to the law of nature and the precepts of natural law, which teaches us how to better preserve mankind. "[W]hen the whole frame of the government is out of order . . . Nature teaches self-preservation. In such a situation, one was returned *to reliance upon the foundation of all political theory, the precepts of natural law*."[144] Ashcraft interpreted Locke as believing that all human laws must rely on natural law to better protect and secure their lives and liberties.[145] I further add that to Locke, a positive law that is not in accord with the higher natural law is "ill made."

> "Human laws are measures in respect of men whose actions they must direct, howbeit such measures they are as have also their higher rules to be measured by, which rules are two, the law of God, and the law of nature; so that *laws human must be made according to the general laws of nature, and without contradiction to any positive law of scripture, otherwise they are ill made.*" (Locke II, 136, emphasis added)

Within the same paragraph, Locke reminded that the uniting of societies and governments to create positive law was done to avoid the inconveniences of the state of nature and for the better protection and security of properties. "To avoid these inconveniences, which disorder men's properties in the state of nature, men unite into societies, that they may have the united strength of the whole society to secure and defend their properties, and may have standing rules to bound it, by which every one may know what is his" (Locke II, 136). Thus, again, positive law is for the better protection of natural law.

Locke also affirms that humans always live under the protection of the law of nature, whether in the natural state or in society; thus, civil law has to respect natural law.

> "To those that say, there were never any men in the state of nature, I will not only oppose the authority of the judicious Hooker, Eccl. Pol. lib. i. sect. 10, where he says, The laws which have been hitherto mentioned, i.e., *the laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship*, never any solemn agreement amongst themselves what to do, or not to do: but forasmuch as we are not by ourselves sufficient to furnish ourselves with competent

[143] Tully, (1980), 166, emphasis added.
[144] Ashcraft, (1986), 193, emphasis added.
[145] See footnote 155, below. Ashcraft, (1986), 190 citing Locke, (1680), *Letter from a Gentleman*, 12–13.

> store of things, needful for such a life as our nature doth desire, *a life fit for the dignity of man*; therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men's uniting themselves at first in politic societies. But *I moreover affirm, that all men are naturally in that state, and remain so, till by their own consents they make themselves members of some politic society; and I doubt not in the sequel of this discourse, to make it very clear*." (Locke II, 15, emphasis added).

Under this paragraph, Locke corroborates Hooker[146] in that the law of nature absolutely binds every man, insofar as he is a man, even if there never was any agreement. Locke further confirmed that the law of nature was implemented after the creation of society. "[A]mongst those who are counted the civilized part of mankind, who have made and multiplied positive laws to determine property, *this original law of nature, for the beginning of property, in what was before common, still takes place*" (Locke II, 30, emphasis added).[147]

Judge (2002) also uses this specific reference to state that natural law and its obligations hold after the creation of societies: "The constraints on waste and sustainability follow as logical extensions of the tales of creation, and as such, *both constraints on private acquisition continue to hold even after the state of nature has been replaced by civil society*."[148] Judge then argued that "while Locke allows that property rights might be altered by civil society, the just private acquisition of goods previously held in common continues in civilized society to be constrained by the same rules as those existing in the state of nature."[149] I use this modern interpretation to support the contention that Locke's natural law limits are valid after the creation of society and corroborate it further below.

For Locke, natural law cannot be put aside by positive law: "[A]nd the ties of *natural obligations are not bounded by the positive limits* of kingdoms and commonwealths" (Locke II, 118, emphasis added). Natural law is always to be used to guide positive law for its better protections and for the amelioration of the common good. This is because no rational creature would give up natural liberties only to decline into a worse condition.[150] The purpose of the positive law must be for the better, as protecting those natural rights. No one wants to give up liberties for anything else but the amelioration of his or her basic conditions.

> "[Y]et it being only with an intention in every one the better to preserve himself, his liberty and property; *for no rational creature can be supposed to change his condition with an intention to be worse* the power of the society, or legislative constituted by them, can never be supposed to extend further, than the common good; but is obliged to secure every one's property, by providing against those three defects above mentioned, that made the state of nature so unsafe and uneasy." (Locke II, 131,

[146] See Hooker's reference in Locke's citation, Eccl. Pol. Lib. i. Sect. 10.
[147] For additional support of Locke's natural law superiority, see Locke II, 59, p. 182, demonstrating that men must always be guided by natural law and its limitations.
[148] Judge, (2002), 332-333 (emphasis added).
[149] Judge, (2002), 332, 333, 336. See also Forde, (2001), 398, 401 ("[T]he pursuit of individual self-interest must be bounded by the law of nature, which commands that each strive, 'as much as he can, to preserve the rest of mankind'" (Locke II, 6)). For a full analysis of the validity of natural law obligations, see Chapter 7.
[150] "The only way whereby any one divests himself of his natural liberty, . . . for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it." Locke II, 95. "But since *a rational creature cannot be supposed, when free, to put himself into subjection to another, for his own harm*; . . . prerogative can be nothing but the people's permitting their rulers to do several things, of their own free choice, where the law was silent, and sometimes too against the direct letter of the law, for the public good." Locke II, 164 (emphasis added).

emphasis added)

Additional support for Locke's superiority of natural law exists in his use of consent. Consent to government is conditioned on the government ameliorating the protection of natural rights. Locke also argued that any sort of human law can be available via consent. This is in comparison to natural law, which is set by nature and remains valid at all times. "Laws therefore human, of what kind so ever, are available by consent" (Locke II, 134).[151]

Locke also insists that one has to limit the power of the sovereign for the property of its citizens. The power of government is "only" for the "good of the society" and it must be under the restrictions of the superior natural law limits.

> "[F]or all the *power the government has, being only for the good of the society*, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws; that *both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds, and not be tempted, by the power they have in their hands*, to employ it to such purposes, and by such measures, as they would not have known, and own not willingly." (Locke II, 137, emphasis added)

Further, for Locke, natural law is superior because it is common to all men by virtue of their common human nature. All men are to follow what is necessary for the preservation of self and others, within the bounds of the law of nature. "The first is to do whatsoever he thinks fit for the preservation of himself, and others *within the permission of the law of nature*: by which law, common to them all, he and all the rest of mankind are one community, make up one society, distinct from all other creatures" (Locke II, 128, emphasis added).

Von Leyden (1956) notes that for Locke, the fact that all men are rational obliges us all to follow the obligations of the law of nature above governmental law:

> "Throughout man's life in society and under political government, the obligations of the law of nature remain valid, and it is only as they are founded on this law that the municipal laws of countries are just laws. . . . because he is rational, man, according to Locke, is eternally subject to natural law, itself a rational law, regardless of whether or not he lives in an established society."[152]

Despite its being superior in its guiding role, Locke explains why natural law cannot be accepted as binding by everyone. For him, it cannot be binding as long as we live in a world with people not following their own bounds of reason, biased by their own interests. "[M]en being *biased by their interest*, as well as *ignorant for want of study of it*, are not apt to allow of it as a law binding to them in the application of it to their particular cases" (Locke II, 124, emphasis added).

As a result, for Locke, positive law is the remedy for societies that do not live by the law of reason: "God hath certainly appointed government to restrain the partiality and violence of men. I easily grant, that *civil government is the proper remedy for the inconveniencies of the*

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[151] For further relevant analysis on consent, see p. 34 and p. 44.

[152] Von Leyden, (1956), 26. "[*R*]*eason not only indicates or teaches what man's duties are*, but at the *same time makes his duties binding*; it is thus a self-depending source of obligation. Locke says; 'In fact it seems to me to follow just as necessarily from the nature of man that, if he is a man, he is bound to . . . fulfil other things appropriate to the rational nature, I.e., *to observe the law of nature'* Locke here tries to establish the necessary validity of moral rules." Von Leyden, (1956), 32 (emphasis added). See also footnote **1163**, below.

state of nature, which must certainly be great, where men may be judges in their own case" (Locke II, 13).Locke realized the danger of the excessive self-love, priorities to friends, ill nature, passion, and revenge that inevitably push people to go too far with punishment. Due to such disadvantages, Locke concluded that civil government is the proper remedy for the inconveniences of this state of nature.

Support from Locke's other sources

As a superior guiding moral law, Locke notes that "the binding force of law of nature is permanent and continuous."[153] Locke divided the law to three kinds: a divine law with sanctions given by God, a civil law with governmental sanctions, and a law of opinion or reputation with social sanctions. Only the divine law may govern morality; the rest can only oblige with God's permission.[154]

Additionally, in a different text, Locke wrote that all human laws must rely on natural law or on men's rights to protect and secure their lives and liberties. "All human laws whether they relate to the kinds of government, or the ways in which persons shall succeed unto it, they *suppose an antecedent right in men of protecting their lives and liberties*."[155] The purpose of all men is to secure those natural prevailing rights.

Ashcraft (1986) used this reference to claim that for Locke, the law of nature stands first as guidance. No positive law can deprive another of the basic rights of nature.[156] Dunn (1969) corroborated this: "Human laws are merely crude social devices for controlling the exercise of governmental power and normatively coercive on their executor only when they do serve this purpose."[157]

There are sufficient references in his *Second Treatise* that clearly show Locke's view that natural law is superior and forever valid. Positive law is to be guided by natural law for better protection. The superiority of natural law also is clearly inferred from Locke's everlasting natural law limits[158] as well as from the authors on whom Locke primarily relied.

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[153] Simmons, (1992), 338–341 citing Locke, (1689), *E.L.N.*, Essay 7, Para. 193, 195–197.

[154] "Of these moral rules, or laws, to which men generally refer, and by which they judge of the rectitude or gravity of their actions, there seem to me to be three sorts, with their three different enforcements, or rewards and punishments. . . . It would be in vain for one intelligent being to set a rule to the actions of another, if he had it not in his power to reward the compliance with, and punish deviation from his rule, by some good and evil, that is not the natural product and consequence of the action itself . . . .

The laws that men generally refer their actions to, to judge of their rectitude or obliquity, seem to me to be these three. 1. The *divine* law. 2. The *civil* law. 3. The *law of opinion or reputation*, if I may so call it. By the relation they bear to the first of these, men judge whether their actions are sins or duties; by the second, whether they be criminal or innocent; and by the third, whether they be virtues or vices. *Divine law, the measure of sin and duty*." Locke, (1689), *Human Understanding*, Bk. I. Ch. 2, Para. 6, 7 until 28, (emphasis added).

[155] Ashcraft, (1986), 190 citing Locke, (1680), *Letter from a Gentleman*, 12–13, emphasis added. The people "have by a Law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves" to judge when their rights and liberties are endangered." Locke I, 119: Locke II, 135, 168 , 222.

[156] "No civil laws or constitutions can restrain and limit us in such things which we have a right unto by the law of nature. That is . . . they could not deprive us of . . . a right to protect and defend ourselves from our declared adversary." Locke, (1680), *Letter from a Gentleman*, 14. Cited in Ashcraft, (1986), 194.

[157] Dunn, (1969), 162. A detailed analysis of modern debate on Locke's superiority of natural law is below, after Locke's origins.

[158] See Chapter 7, below.

3.1.6 Modern debate on the superiority of natural law

Most modern authors now recognize that Locke considered natural law superior in its guiding role. Most modern authors confirm that Locke and his predecessors thought that governmental law merely better protected natural property rights.[159] Donald (2011) demonstrates the superior validity of natural law through historical events:

> "The bloody and unsuccessful experiment of Socrates disciple, Critias, showed that the rule of law, not men, was correct. This renewed the question 'What law, who's law.' Not all laws are arbitrary; there must be laws universally applicable, because of the universal nature of man. Laws governing human affairs, or at least some of those laws, must derive from some objective and external reality, "There is in fact a true law—namely, right reason—which is in accordance with nature, applies to all men, and is unchangeable and eternal."[160]

Other authors such as Simmons, Ashcraft, Dunn, and Judge agree with Donald and Seliger (1963), who state that positive laws "are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted."[161] The basis of argumentation of Seliger, however, is that for Locke, the validity of natural law is independent of the consent of the people and as such superior to positive law.[162]

3.1.6.1 The superiority of natural law after the creation of society

The traditional interpretations of Locke, Macpherson and his followers argue that with the introduction of money, consent becomes the only basis for private property rights. The recognized natural law limit of no spoilage essentially disappears after the consent to use money.[163] The technical obstacle of no waste is no longer applicable. Men can now accumulate as much as they want without causing a waste because money, as well as gold and diamonds, cannot perish.

Indeed for Locke, it was the introduction of money and men's agreements on it by tacit consent that created a right to the enlargement of their material property; "had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions, and a right to them" (Locke II, 36).

To Macpherson (1962), it is clear that the intervention of money has allowed men to freely accumulate property while "transcending" Locke's natural law limits[164]: "The introduction of money . . . removed the technical obstacle which . . . had prevented unlimited appropriation from being rational in the moral sense, i.e. being in accordance with the law of nature or law

[159] See references within Simmons, (1992), Ch. 6.1.
[160] Donald, (2011). "Cicero successfully argued before a Roman court that one of the laws of Rome was unlawful, being contrary to natural law, creating a legal precedent that held throughout the western world for two thousand years. Although it was frequently violated, it was rarely openly rejected in the West until the twentieth century." Donald, (2011), 5, History, Para. 4 (find in bibliography under internet sites).
[161] Seliger, (1963), 351, citing Locke II, 12.
[162] "[T]here is little reason to doubt that, for Locke, the validity of natural law is in principle independent of consent, for not only in his theory of labor and property." Seliger, (1963), 345-346.
[163] See, e.g., Macpherson, (1962), 204-235; Steiner, (1977), 44; Moulds, (1964), 187; Strauss, (1953), 221-248; Schlatter, (1951), 151; Day, (1966), 207–220; Squadrito, (1979), 255–258.
[164] Macpherson, (1962), 204.

of reason."[165] Scanlon (1981) joined Macpherson and argued that with the introduction of money, "the *original moral foundation for property rights is no longer valid, and a new foundation is required*. He argues that Locke takes consent to be this foundation."[166] Strauss (1953) made a similar contention: "[R]estraint of the appetites is replaced by a mechanism whose effect is humane."[167] According to Strauss, the introduction of money results in the "emancipation of acquisitiveness"; "*man is . . . emancipated from the bonds of nature, and there with the individual is emancipated from those social bonds which antedate all consent or compact.*"[168] Macpherson justified his argument by saying that Locke recognized money to be a source of inequalities: "[I]t is plain, that men have agreed to a *disproportionate and unequal possession of the earth* . . . " (Locke II 50. See also Locke II 36, 37, emphasis added).

It is a fact that for Locke, before the introduction of money and men's agreements by tacit consent to give rights to the enlargement of their material property, the needs of men were simple, based on their usefulness to life and the convenience of life (Locke II 36, 37; see below). For example,

> "This is certain, that *in the beginning, before the desire of having more than man needed* had altered the intrinsic value of things, *which depends only on their usefulness to the life of man;* or had agreed, that a little piece of yellow metal, which would keep without wasting or decay, should be worth a great piece of flesh, or a whole heap of corn; though men had a right to appropriate, by their labour, each one of himself, as much of the things of nature, as he could use: yet this could not be much, nor to the prejudice of others, where the same plenty was still left to those who would use the same industry." (Locke II, 37, emphasis added)[169]

Macpherson argued that Locke provides no answer as to why anyone would "desire of having more than man needed" (Locke II, 37) as within his state of nature, where needs "depend only on their usefulness to the life of man" (Locke II, 36–37). Macpherson concluded that Locke was an extreme materialist as his only aim for the accumulation of property was the accumulation of money. To him, Locke "justified the specifically capitalist appropriation of land and money" as a natural right within the state of nature.[170]

It is understandable that Macpherson argues that the use of money for Locke was not necessarily morally bad. Economic activity that developed after the introduction of money actually increased the value of the common stock because common stock was no longer dependent on and limited to the scarce quantity of land and natural resources (Locke II, 45). This, for him, gave everyone the opportunity to increase wealth in different ways. However, Macpherson goes much too far in explaining that for Locke, the community as a whole would

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[165] Macpherson, (1962), 235.
[166] Macpherson, (1962), 235 citing Scanlon, (1981), 126, emphasis added.
[167] Strauss, (1953), 240.
[168] Strauss, (1953), 248, emphasis added.
[169] Indeed, Locke says; "The *measure of property nature has well set by the extent of men's labour and the conveniences of life: no man's labour could subdue, or appropriate all; nor could his enjoyment consume more than a small part*; so that it was impossible for any man, this way, to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for as good, and as large a possession (after the other had taken out his) as before it was appropriated. This measure did confine every man's possession to a very moderate proportion, and such as he might appropriate to himself, without injury to anybody, in the first ages of the world." (Locke II, 36, emphasis added).
See also Locke II, 51: "So that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and convenience went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of." (Locke II, 51).
[170] Macpherson, (1962), 205–207.

be better off after the introduction of money and that Locke promoted a limitless natural law . Macpherson (1951) concluded that "Locke's astonishing achievement was to base the property right on natural right, and then *to remove all the natural law limitations from the property right*"[171] (emphasis added).

Although Locke did not explain specifically why men need more than is useful for life, this does not justify Macpherson's far-reaching conclusion that natural law limits end with the use of money and consent. This goes against Locke's contention on the superiority of natural law (Locke II, 135, 131, 137) and its limits. [172]

Locke's references to the eternal validity of natural law and its limits[173] oppose the traditional thinking of Macpherson and his followers, who see Locke's introduction of money as a turning point that breaks the natural bonds of nature and allows unlimited appropriation. Locke's own claim of the eternal validity of natural law (Locke II, 135) works against this notion; the positive law exists solely for better protection and is to be regulated accordingly (Locke II, 12).[174] Locke's *Second Treatise* also clearly discusses the positive law as a better protection in the unsafe state of nature (Locke II, 13, 37, 92, 101, 123, 124, 126, 127, and 131).[175]

Simmons (1992) is a modern corroboration of this notion. Even if Macpherson finds some property inequalities as contributing to the well being of all, it still cannot excuse "unlimited capitalist appropriation." Simmons further added that to reach this conclusion, Macpherson would have to rely on some of Locke's texts that Macpherson himself admits to being probable late insertions into the text of chapter 5.[176]

Judge,[177] Ashcraft (1986), Von Leyden (1956),[178] and others support the timeless validity of natural law limits.[179] For Locke, "the same law of nature that does by [labour] give us property, does also bind that property too."[180] I use these and other interpretations to corroborate my argument that for Locke, natural law is eternally valid.[181]

Dunn (1984) also held that the invention of money was a turning point. He adds that while Locke might not have minded certain limited private property resulting from labour, "Locke felt deeply ambivalent" with regard to private property resulting from money. He had some "doubts" as to private property resulting from the invention of money after recognizing the consequential inequalities.[182] For Dunn, Locke never denied the "moral fragility of commercial capitalism."[183] Dunn is convinced that while "labour had done mankind nothing

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[171] Macpherson, (1951), 552.
[172] See chapter on limitations, p. 210.
[173] See also chapter on limitations and Locke's references to their validity, p. 210.
[174] See Locke's references to natural law superiority on p. 29.
[175] See analysis on p. 69.
[176] Simmons, (1992), Ch. 5.4, Machpherson, (1962), 212. Other modern interpreters include Waldron, (1979), 323-324; Rapaczynski, (1987), 208-209; Christman, (1986), *Philosophy*, 167-168 and; Shapiro, (1986), 94.
[177] See above p. 31.
[178] See above p. 32.
[179] See, e.g., Simmons, (1992), Ch. 5.4; Ashcraft, (1986), 85–86; Von Leyden, (1956), 26, 32; p. 29.
[180] Locke II, 31.
[181] See Modern debate on each natural law limit, p. 210.
[182] Dunn, (1984), 41.
[183] Dunn, (1984), 40. Ryan, (1988) writes that, "*If John Dunn exaggerates … when he says that Locke … 'had about as much sympathy for unlimited capitalist appropriation as Mao Tse-tung,' he does not exaggerate much"* (Ryan, (1988), 40 citing Macpherson, (1962), 232-238 and Dunn, (1969), 209).

but good," for Locke, "[t]he role of money was altogether more ambiguous."[184] He argued that Locke was aware of the inequalities of property deriving from the "different degrees of industry" shaped by contract, inheritance, and the invention of money. [185]For him, it is due to money that disputes arose and that "right and conveniency no longer went together."[186]

Tully (1980) goes further than Dunn. According to Tully, Locke felt morally uncomfortable with the use of money[187] and the introduction of money has made possible the inequality of possessions. He goes further and says that for Locke, money is the root of all evil and the source of man's fall, responsible for the end of a "Golden age" (Locke II, 111). It extended man's desire for more and encouraged waste. People have started to desire more than needs and conveniences. It was this that allowed the evil desire of unlimited possessions, which was hidden while all individuals lived by necessities alone. For him, money "disrupted the natural order," and Government was obligated to solve inequalities caused by money so that it is "in line with God's intentions" of non-dependence and self-government. [188]

It was money that transcended the natural law limits on private property. Tully argues that after the creation of society individuals gave all their natural power to it so that "the relation of member to society is that of part to whole; or like servant to master."[189] I find that an odd reading of Locke, especially coming from Tully, who is generally against Macpherson. Locke focused on limiting governmental abuse of power so that its role was solely to improve the protection of natural law (Locke II, 111, 131, 134, 135, 159, 171).[190] Tully's reference to a master and servant relationship is astonishing considering Locke's clear words that no one can infringe upon another's life, health or liberties (Locke II, 6) while expressly forbidden the use of a servant unless through a contract for services with money paid: "No body can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it" (Locke II, 23, emphasis added).[191]

In 1995 Tully stated, "The agreement in the use of money does not 'justify' the inequalities. Rather, it accords artificial value to money and provides 'a way' of acquiring fair inequalities, thereby *making great inequalities 'practicable' or possible, for without money and markets people would have no motive or reason to increase their holdings*" (Locke II, 48–49, emphasis added).[192] Most modern authors from all groups thus agree that the use of money is the turning point in political society in transcending the spoilage limitation. I disagree with this tendency and in particular with Dunn and Tully's view as to the use of money as entirely condemned by Locke. He did not necessarily condemn the use of money but did not treat it as entirely positive in increasing the common stock, as Macpherson claimed. Locke sought to explain this transition from the state of nature (needs based on usefulness) to the use of money, which enlarged ownership of material—not necessarily for luxury, but for comfort and security[193] because natural resources were "scarce*"* (Locke II, 45):

> "Men, at first, for the most part, contented themselves with what unassisted nature offered to their necessities: and though afterwards, in some parts of the world, (where

[184] Dunn, (1984), 40.
[185] Dunn, (1984), 39.
[186] Dunn, (1984), 40.
[187] Tully, (1980), 147-151.
[188] Tully, (1980), 147-154. Mentioned within Simmons, (1992), 304.
[189] Tully, (1980), 158-161.
[190] See analysis of limits on governments for the protection of individuals on p. 100.
[191] See p. 62.
[192] Tully, (1995), 123.
[193] Locke specifically allows for enjoyment of property for comfort and convenience of life. p. 137.

> the *increase of people and stock, with the use of money, had made land scarce, and so of some value*) the several communities settled the bounds of their distinct territories, and by laws within themselves regulated the properties of the private men of their society, and so, by compact and agreement, settled the property which labour and industry began; and the leagues that have been made between several states and kingdoms, either expressly or tacitly disowning all claim and right to the land in the others possession, have, by common consent, given up their pretences to their natural common right, which originally they had to those countries, and so have, by positive agreement, settled a property amongst themselves, in distinct parts and parcels of the earth." (Locke II, 45, emphasis added)

Locke merely contested the use of money after an increase of stock and population when land became scarce. He did not justify or condemn it but noted that consent had become necessary as a basis for property rights. Indeed, Locke knew the introduction of money made possible the preservation of more property than man could consume. "And thus came *in the use of money, some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life*" (Locke II 47, emphasis added). [194]

Money is treated like the use to gold and silver, which does not perish. For Locke, property could increase without harming the share of others—"without injury to any one, these metals not spoiling or decaying in the hands of the possessor" (Locke II, 50). Locke made it clear that it is labour that first created the right of property within the state of nature. After the "increase of population" and "stock" making land scarce, men needed consent to protect property via agreement (Locke II, 45).[195] For Locke, the value added by money was decided by mutual consent so that humans could keep more property without spoiling and exchanging it later for necessities of life. I argue that this enlarges the possibilities to own more property without transgressing the natural law limitation of no waste.[196] But Locke also thought that men had found a way to enlarge their possessions, not necessarily out of greed, but for security and convenience, without causing any harm to the common stock.

My argument finds support in Simmons, Rapaczynski, and Vaughn, who explained that the transition to money is driven by the human will to transcend natural limitations, not necessarily for greed, but to gain security, freedom, self-sufficiency, and comfort.[197] My view is much inspired by Simmons (1992) and Ashcraft (1986), who see money merely as the "last piece of the puzzle."[198] Locke claimed that the introduction of money "has its value only from the consent of Men" (Locke II, 50, emphasis added). The implication is that consent is required.[199] But consent does not replace the natural law basis of property rights, as Macpherson and his followers (and even Tully) argued. Consent is simply an additional basis for property rights in order to better protect the natural property rights of each person, his/her liberties, and possessions.[200] For Locke, the law of nature cannot be binding, in spite of its superiority, at least as long as we live in a world with people not following their own bounds

[194] See also Locke II, 36, 38, 50.
[195] See p. 37.
[196] See chapter on limitations, p. 210.
[197] Simmons, (1992), 300 citing Rapaczynski, (1987), 207; and Vaughn, (1980), 103.
[198] Simmons, (1992), 302. Many modern authors' references that I use that are mentioned by Simmons, who provides a good general overview of most interpreters of Locke.
[199] See Ashcraft, (1986), 277 and Simmons, (1992), 302.
[200] For property rights covering person, liberties, and possessions, see p. 118.

of reason, biased by their own interests (Locke II, 124).[201] Because most people are biased by their own interests and have an equal right to self-government, a natural law basis of property rights can be unsafe and insecure (Locke II, 13, 37, 92, 101, 123, 124, 126, 127). [202]

As such, I argue that the consent to use money was a necessary, additional basis of property rights. Consent does not end the natural law limitation of no waste. It only enlarges man's ability to accumulate property; waste is still not allowed on property that may perish, such as land, products of land, or any other good useful for the convenience of life. Money merely gave men the ability to acquire more; nothing suggests that limits are abolished. It is recognized that money creates inequalities but is not morally wrong. But Tully and Dunn held that for Locke, money was the source of inequality and thus morally wrong.

But Simmons argued that there is no textual support for the view that money is morally wrong. Locke shows some regret as to the introduction of money due to the loss of the "poor but virtuous age" of small possessions (Locke II, 110). However, for Simmons, it is not only the introduction of money but also the "want of people" (Locke II, 108) that allowed the original community based on necessities to exist. He explains that for Locke, it was not only money but also the increase in population that was a source of inequality. Locke could not have opposed an increase in population, so he inferred that Locke did not necessarily oppose money.[203]

I partially join Simmons in that Locke did not claim that money was the source of all inequality; natural reasons such as an increase in population contributed. Locke's *Second Treatise* clearly states that it is not money but population and stock increase and land scarcity: "[T]hough afterwards, in some parts of the world, (where the *increase of people and stock, with the use of money, had made land scarce,* and so of some value" (Locke II, 45, emphasis added).

I partially oppose Simmons's insistence not to include money as a source of inequality. Locke includes it and noted that "had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions, and a right to them" (Locke II, 36). "*[T]he use of money*, had made land scarce" (Locke II, 45, emphasis added); "it is plain, that with the use of gold and silver that are compared to money in them being imperishable, men have agreed to a *disproportionate and unequal possession of the earth*..." (Locke II, 50; Locke II 36, 37, emphasis added). This is supported by modern authors such as Waldron and Ryan in that for Locke, money was unfortunate but allowable.[204]

Simmons claimed that Locke did not include money in his list of the sources of the need for civil as: the want of "settled, known law"; "known and indifferent judge" and a "power to back and support the sentence" (Locke II, 124–26).[205] However, I argue that this list explained the need for humans to join society while strictly referring to the state of nature before the transition to civil society. Locke stated, "In the state of nature there are many things wanting." Money came afterwards, so it was not mentioned in this specific list.

Simmons further noted that Locke's vocabulary relating to the introduction of money speaks of "fair," "practicable," and of "no injury to anyone" (Locke II, 50) or that people have "a

[201] See p. 32.
[202] Natural law is unsafe when protected by the positive law, p. 69.
[203] Simmons, (1992), 305.
[204] See Waldron, (1988), 221 and Ryan, (1984), 30-31, 39-40; Also mentioned in Simmons, (1992), 305.
[205] Simmons, (1992), 302-305.

right to them" (Locke II, 36).[206] As such, Locke never really suggested that the use of money is morally wrong or illegitimate. Ashcraft (1986) added that Locke's language is hardly a language of moral condemnation.[207] Both Simmons and Ashcraft say that Locke seems to accept the use of money while justifying and explaining its use.[208]

Ashcraft's (1986) noted that "[t]he invention of money, and commerce with other parts of the word, in other words, may themselves be justifiable practices if they are viewed as being consonant with the natural law command to provide for the common good—which is the way Locke views them—but they *provide no justification whatsoever for the 'wasteful' use of land property.*"[209] Ashcraft thus argued that for Locke, the invention of money is justified as long as it works for the "public good." Even after the introduction of money, waste was still not allowed; the common good and no harm to the future proprietors were guaranteed.

According to Locke, "Again, if he would give his nuts for a piece of metal, pleased with its colour; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life *he invaded not the right of others, he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it*" (Locke II, 46, emphasis added).

To Locke, money and other objects could be accumulated without invading others' share because people can accumulate more than they need without it perishing from non-use. When it comes to perishable goods that are accumulated, the natural law limit of no waste remains in effect. The point is not the quantity of property accumulated but whether the waste of perishable items would harm the share of others. I tend to agree with Simmons and his supportive references as well as Ashcraft that Locke does not see money as illegitimate or morally wrong; however, Locke does recognize money to be a source of inequality (Locke II 45, 50. See also Locke II 36, 37, 110). I thus argue that the use of money does not cancel the validity of the natural law limitations on acting for the self to ensure the long-term preservation of the whole.

I argue that Locke might not have liked the possible consequences of the use of money (Locke II 50, 110 above), but they are the natural consequences of events after man's needs increase. For Locke, money does not eliminate the limits of natural law. Money could have been necessary to expand the natural law limitations on comfort and security[210] while creating other opportunities than using only limited natural recourses: "*increase of people and stock, with the use of money, had made land scarce,* and so of some value" (Locke II, 45, emphasis added). The natural law and its limits remain superior and valid.

Locke included human agreement and consent as further bases for property rights so that property rights, after the use of money and creation of society, could also be based on the positive law for better and clearer regulation. Natural law is unwritten and vague, and conflicts would arise if property rights were based solely only on natural law as it is "*nowhere to be found but in the minds of men*, they who through passion or interest shall miscite and

[206] Simmons, (1992), 305.
[207] Ashcraft, (1986), 271, 273; Supportive references here are; Seliger, (1968), 149; Wood, (1984), 77-78; Drury, (1982), 35 and; Snyder, (1986), 723-750; Simmons, (1992), 305.
[208] Simmons, (1992), 301-305. Simmons also supports Mackie, (1982), *Review of Tully 1980*, in that even if Locke regretted the use of money, he makes not claim that it is contrary to God's intentions or that its use will end legitimate appropriation based on natural property rules (Simmons, (1992), 305 citing Mackie, (1982), 93).
[209] Ashcraft, (1986), 271, emphasis added.
[210] See p. 137.

misapply it, cannot so easily be convinced of their mistakes where there is *no established judge*" (Locke II, 136, emphasis added).[211] In adding an additional basis for property rights, the natural law limitations remain superior for moral guidance and interpretation, universally and timelessly applicable to "the municipal laws of countries, which are only so far right, as they are founded on the law of nature, by which they are to be "regulated and interpreted" (Locke II, 12, emphasis added, Also Locke II, 135 above).[212] This is consistent with the generally accepted view on natural law. In a way, Locke infers that governments are to create a positive law of property rights that is convenient for the specific needs of societies at that specific time. It must flexible and align with the natural law and its restrictions as superior and divine moral norms. In this thesis, I demonstrate not only that Locke did not remove the boundaries of the natural law but also that he provided specific details about its limitations concerning property. Locke's natural law limitations should have remained valid after the creation of societies.[213]

Grotius presented Locke's idea of a transition from the state of nature to a state with property in a discussion on the transition from the simple life of a community of goods to a more refined way of life. According to Grotius, men had "departed from the primeval state of common ownership of things" because they "were no longer content to live on the spontaneous products of the earth, or to dwell in caves . . . and wanted a pleasanter way of life." Too, *population multiplied*, and there developed *increasing differences in interest, faculty, aptitude, and moral quality among men*; It was then that industry became both possible and necessary, "and each individual applied himself to some particular craft."[214] For Grotius, the increase in needs is a natural result of an increase in the population and the needs for a more refined way of life.[215]

3.1.6.2 Modern debate on the inequality of possessions deriving from the use of money

Locke was aware that with the use of money, "men have agreed to a disproportionate and unequal possession of the earth" (Locke II, 50 above), but money was not necessarily bad and even could increase possessions for natural reasons such as security and comfort as natural resources were limited; "*increase of people and stock, with the use of money, had made land scarce*, and so of some value (Locke II, 45, emphasis added).[216] On this I may even agree with Macpherson, who pointed out that Locke felt money increased the common stock and was thus beneficial.[217]

My disagreement with Macpherson starts when he uses Locke's unequal property ownership to conclude that only property owners are full members of society, deserting all rights; he also

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[211] See precepts of natural law, p. 55.
[212] See natural law as higher guidance, p. 29.
[213] See the chapter on limitations, p. 210.
[214] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2.
[215] "When the inhabitants of the earth began to *acquire a taste for more delicate fare than the spontaneous productions of the ground*, and to look for *more commodious habitations* than eaves, or the hollow of trees, and to long for *more elegant clothing* than the skins of wild beasts, industry became necessary to supply those wants, and each individual began to apply his attention to some particular art. The distance of the places too, into which men were dispersed, prevented them from carrying the fruits of the earth to a common stock, and in the next place, the WANT of just principle and equitable kindness would destroy that equality which ought to subsist both in the labour of producing and consuming the necessaries of *life*" (Grotius, *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 5, emphasis added; see also p. 75). This joins Simmons' argument that money is not the only source of inequality. Grotius refers also to the increase in populations and their interests.
[216] See p. 37.
[217] Macpherson, (1962), 211–213.

claimed that Locke defended class division in society with property owners on the top.[218] For Macpherson, Locke "justifies, as natural, a class differential in rights and in rationality, and by doing so provides a positive moral basis for capitalist society, implying thereby that capitalism requires differential rights."[219] Macpherson claimed that Locke overlooked the fact that exchange with money gives no guarantee that the wealth produced would be equally distributed among men and did not contest this inequality.[220]

Ebenstein (1947) confirmed this view by noting that Locked had no problem with the inequality of possessions created by the use of money: "[I]n his doctrine of property, Locke makes no serious attempt to reconcile the teaching of natural law, which seems to result in reasonable quality of property with the inequality of property which stems, by consent among men, from the use of money."[221] According to Pollock, Locke saw the difficulty in the inequality of property but did not remove it.[222]

Vaughn (1980) tried to understand Macpherson by saying that Macpherson might have believed that if for Locke society becomes unequal in possession it may also imply unequal rights in addition to unequal capacities.[223] Vaughn further added that because to Locke, not all men are equally rational, Macpherson might have assumed that less-capable men would prefer selling their labour for security while avoiding the risks of living only on what they produce.[224]

Locke may have recognized that money was a source of inequality: "[I]t is plain, that men have agreed to a disproportionate and unequal possession of the earth . . ." (Locke II, 50. See also Locke II 36, 37). However, this inequality was less relevant to Locke for it is measured by the labour of each and might even be fair. To Locke, there are some natural inequalities because although all "*men by nature are equal, I cannot be supposed to understand all sorts of equality*: age or virtue may give men a just precedency: excellency of parts and merit may place others above the common level: *birth may subject some, and alliance or benefits others*" (Locke II, 54, emphasis added). As such, certain inequalities in terms of material possessions is reasonable and even fair considering the labour or the "just precedency: excellency of parts and merit." The equality that was important to Locke was that of opportunity for the same self-preservation without interference of others (Locke II, 54).[225]

Additionally, I add that Macpherson's interpretation of a society with a division of classes based on rationality opposes Locke's own words on equality (Locke II, 4, 5, 54). [226] I agree with Simmons who noted that to Locke, "some inequalities may be fair, if fairness of acquisition is relative to the number of persons and common resources in existence at the moment of acquisition."[227] Macpherson's interpretation of inequality of possessions considered only material goods; Locke thought that material goods were only a means to secure basic property rights of self-preservation and self-government (life and liberty) (Locke

[218] Ibid., 200.
[219] Ibid., 221. See more on Macpherson's societal class division at p. 125.
[220] Ibid., 211.
[221] Ebenstein, (1947), 326.
[222] Pollock, (1922), 90–91.
[223] Vaughn, (1980), 82
[224] Ibid.
[225] See p. 79.
[226] See analysis on equality on p. 79.
[227] Simmons, (1992), Ch. 5.5, 301.

II, 6, 123, 124).[228]

I instead join Simmons in saying the only justification Locke gives for inequality is the consent to use money (Locke II, 36, 50). As such, there is no natural basis for inequality of property as argued by Macpherson. According to Simmons, appealing to consent is not necessary for inequality of possessions as no wrong is done by the appropriation of much property. This is the same as no consent being necessary for the division of the original common property. Only afterwards, due to scarcity, does consent become necessary.[229]

Locke noted that there is no wrong in "largeness" of property but only in the waste of perishable goods: "the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of anything uselessly in it" (Locke II, 46) (consent was only required during scarcity (Locke II, 45)).[230] Macpherson's interpretation of a divided society within Locke is an absurd reading and ignores his efforts to give equal opportunities to each individual for the preservation of the self and others, deserting equal treatment of their rights.[231]Nearly every subheading of this thesis confirms Locke's efforts to demonstrate that all humans are equal in the right to self- preservation and all that is necessary for that purpose (Locke II, 6) by virtue of common capacity (Locke II, 4, 5) to reason, which is moral in nature (Locke II, 12, 124, 136). I demonstrate Locke's morality within his state of nature; to him, a peaceful state of mutual understanding and peaceful preservation was possible.[232] Locke believed in the dignity of human nature (reason above passion) and all his texts focus on the fact that it is possible to achieve the purposes of the natural law (Locke II, 7, 8): the mutual safe preservation and mutual understanding among all members of humanity.[233]

3.1.6.3 The role of consent in the transformation of society

After the creation of societies, the freedom of the state of nature is transferred to the government by consent. According to Locke,

> "*[B]y consent, they came in time, to set out the bounds of their distinct territories, and agree on limits between them and their neighbors*; and by laws within themselves, settled the properties of those of the same society (Locke II, 38, emphasis added). Further, "by *common consent*, given up their pretences to their natural common right, which originally they had to those countries, and so have, by positive agreement, settled a property amongst themselves" (Locke II, 45).[234] Locke explained that as all men are "equal *and independent*" by nature (Locke II, 6), the grouping of men into "in-dependent societies" or "distinct peoples" cannot itself be natural. "Civil society" is founded on a contract: "that which *begins and actually constitutes any political society is nothing but the consent of any number of free men capable of a majority to unite and incorporate into such a society.*" (Locke II, 99, emphasis added)

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[228] See my analysis of Locke's interpretation of property on p. 118. This is supported by Simmons, (1992), 298–306 (it is not only material goods but also access to them and to the creation of wealth that must be thus secured. Kelly, (1988), 289).
[229] Simmons, (1992), 303; see also Winfrey, (1981), 432–433 and Kelly, (1988), 292.
[230] See p.37.
[231] See the role in the preservation of others on p. 100.
[232] See my analysis of Locke's peaceful preservation on p. 73.
[233] See the purpose of the natural law in Locke on p. 99. See also his discussion of morality in the state of nature on p. 73. For further debate on Macpherson's class division (Macpherson, (1962), 205-207), see the fair share limit on p. 224.
[234] See also Locke II, 95, p. 92.

He clearly explained,

> "MEN being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, *and subjected to the political power of another*, without his own *consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community* for their *comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against* any, that are not of it…." (Locke II, 95, emphasis added)

Here, it is clear that the only way to change the conditions of this natural liberty and give some liberties to the government is by mutual consent among men in exchange for better security and safety of property.[235]

Locke stated that only mutual agreement can remove from an individual the liberties granted by the state of nature:

> "[F]or it is not every compact that puts an end to the state of nature between men, but *only this one of agreeing together mutually to enter into one community*, and make one body politic; other promises, and compacts, men may make one with another, and yet still be in the state of nature." (Locke II, 14, emphasis added)

It appears that for Locke, mutual agreement is the basis for private property rights as fixed by the government. This is clearly repeated in para. 122: "[M]embers of that commonwealth. Nothing can make any man so, but his actually entering into it by positive engagement, and *express promise and compact*" (Locke II, 122, emphasis added).

This view is again confirmed by Locke's predecessors. For Grotius and Pufendorf, private property in its unlimited form can only be created by human conventions after the creation of societies.[236] Pufendorf agreed that alienation of property is possible but noted that for any transfer of rights, consent by both parties is needed.[237] For Pufendorf, "it is impossible to conceive how the mere corporal act of one person can prejudice the faculty of others, unless their consent is given."[238] "It must be observed that the concession of God by which He gives men the use of terrestrial things is not the immediate cause of ownership . . . but *it [ownership] presupposes a human act and an agreement, express or implied*."[239] For Pufendorf, a contact is always necessary.[240]

After the creation of society and the use of money, consent became necessary for the transfer of liberties of the state of nature to private property rights. The term of tacit consent[241] implies

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[235] Locke noted the same in II, 131. See p. 107.

[236] Grotius, (1625), *War and Peace*, Bk. II, Ch. 17, Sec. 2, Para.1. For Grotius, (1625), it is "possible *for the holders of these rights to alienate them freely by a voluntary act of self-obligation, restricted only in that an alienation of the own life and body is void.* Apart from that, the inhabitant of the state of nature can alienate certain rights '*by an indication of his will [indicio voluntatis],' obliging him self 'to his fellow man' and giving rise to new personal and property rights in other human beings (TQ, fol. 287r, th. 3).* The inhabitants of the state of nature do not have any legal claims with regard to the other inhabitants until they actually decide to engage in transactions with each other." See within Straumann, (2006), 344-345.

[237] Pufendorf, (1672), *De iure Naturae* , Vol. IV, Lib. 9, Cap. 2.

[238] Ibid. Vol. II, Lib. 4, Cap. 5.

[239] Pufendorf , (1672), *De iure Naturae* , Vol. IV, Lib. 5, Cap. 4, emphasis added.

[240] Pufendorf, (1672), *De iure Naturae*, Vol. IV, Lib. 4, Cap. 14; Pufendorf, (1672), *De iure Naturae,* Vol. IV, Lib. 4, Cap. 9. For more references on both origins, see p. 53, p. 130, p. 219.

[241] See below.

that for Locke, it is not only with consent that limitless property rights can exist. Another important condition is that the government respects natural law and its protection of individual rights.

3.1.6.4 Tacit consent confirms the validity of natural law after the creation of society

To resolve the difficulty of Locke's strict definition of consent as a mutually expressed consent and its recognized practical impossibility (Locke II, 28), I argue that for Locke, it is not necessarily a compact in the strict sense, interpreted as a necessity of the consent of each and every member. I argue that tacit consent can be sufficient.

Tacit consent is a specific form of consent that is not expressed by a positive act but rather by the failure to do certain acts, or by remaining inactive and silent. However, the practical impossibility of the express compact, if interpreted strictly, remains unresolved as few could be said to have given their express consent to government laws.

Kilcullen (1983) held that an agreement that exchanges the state of nature for conventions must be a unanimous agreement. Each is to give consent while those joining later must also do so (Locke II, 116, 122). Those not consenting do not become members and remain in the state of nature.[242]

> "[I]f the point is rather to show that certain rights limit the obligation to obey, when there is one, by arguing that those rights could not be abrogated by even an explicit promise of absolute obedience, then vagueness and confusion about tacit consent does not matter. The argument will succeed as long as we grant that if an explicit promise would not abrogate a right nothing else will."[243]

Locke himself noted that a compact in the strict sense is impossible:

> "And will anyone say, he had no right to those acorns or apples, he thus appropriated, because *he had not the consent of all mankind to make them his*? Was it a robbery thus to assume to himself what belonged to all in common*? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him.* We see in commons, which remain so by compact, *that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use. And the taking of this or that part, does not depend on the express consent of all the commoners*." (Locke II, 28, emphasis added)

Here, it is not the mutual consent that confers a right in property; the labour to obtain such consent would result in people starving to death. I use Simmons as partial support for my arguments. Simmons agreed that for Locke, consent was necessary for political obligations. However, Simmons noted that Locke could have easily chosen to base inequalities of property on consent at an earlier stage of the original common (as with Grotius, for example).[244] However, Locke specifically chose not to do so (Locke II, 28) while mentioning the practical impossibility of gaining the necessary consent from all individuals.

For Locke, it was impossible to gain full and voluntary consent from some classes of individuals (e.g., servants). Simmons noted that "express consent" cannot be a valid ground

[242] See Kilcullen, (1983), 332 on the basis of (Locke II, 95).
[243] Kilcullen, (1983), 341.
[244] See analysis on p. 131.

for political obligation due to its physical impossibility; the "*real battleground for consent theory is generally admitted to be the notion of tacit consent*."[245] Locke explained that the "inequality of private possessions" was possible "only by putting a value on gold and silver and *tacitly agreeing* in the use of Money" (Locke II, 50, emphasis added). Locke used the term "tacit consent" as a clear answer to the strict nature of express consent:

> "*Sec*. 119. Every man being, as has been shewed, naturally free, and nothing being able to put him into *subjection to any earthly power, but only his own consent*; it is to be considered, what shall be understood to be *a sufficient declaration of a man's consent, to make him subject to the laws of any government*. There is a *common distinction of an express and a tacit consen*t, which will concern our present case. No body doubts but an express consent, of any man entering into any society, makes him a perfect member of that society, a subject of that government. *The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, i.e. how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all.* And *to this I say*, that every man, that hath any *possessions, or enjoyment, of any part of the dominions of any government,* doth thereby *give his tacit consent*, and is as far forth *obliged to obedience to the laws of that government, during such enjoyment*, as any one under it; whether this his possession be of *land*, to him and his heirs for ever, or a *lodging only for a week*; or whether it be barely *travelling freely on the highway;* and in effect, *it reaches as far as the very being of any one within the territories of that government.*" (Locke II, 119, emphasis added)

Locke state that because men are all born equally free, the only way for one to give away natural rights is via "consent." Locke continued and explained that "no body doubts" the power of express consent; it is the only way to become a full member of society, subject to that government. However, Locke himself answered the strict general compact. Locke was well aware of the common confusion regarding the different forms of consent and provided a solution: tacit consent.

Locke specifically used tacit consent in other portions of his *Second Treatise* to imply that the transition to the use of money and societies was done by tacit consent: *"*had not the Invention of Money, and the *tacit Agreement of Men to put a value on it*, introduced (by Consent) larger Possessions, and a Right to them*"* (Locke II, 36, emphasis added). According to Locke,

> "Sec. 50. But since gold and silver, being little useful to the life of man in proportion to food, raiment, and carriage, has its value only from the consent of men, whereof labour yet makes, in great part, the measure, it is plain, that men have agreed to a disproportionate and unequal possession of the earth, they having, *by a tacit and voluntary consent*, found out, a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the over plus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor. This partage of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and *tacitly* agreeing in the use of money: for in governments, the laws regulate the right of property, and the possession of land is determined by positive constitution." (Locke II, 50, emphasis added)

[245] See also Ryan, (1984), 40; Replogle, (1989), 205.

Tacit consent was Locke's solution to the impossibility of a strict general agreement, together with the difficulty it created.[246]

Locke clearly showed that tacit consent is given by merely staying or "being . . . within the territories of that government." Locke provided examples of tacit consent, such as possession of land within government territory, lodging within it for holiday, or travelling on its highways (Locke II, 119). This definition is clearly broad and can include almost any use or presence in government territory. Pitkin recognized that Locke made a citizen's consent virtually automatic. "[W]hy all the stress on consent if it is to include everything we do?"[247] Simmons concluded that Locke's tacit consent is not express but rather given while performance of certain acts. Examples include something that is not a "genuine consensual act" but rather and obligation arising from the principle of "fairness or gratitude."[248] However, does this broad definition include awareness of the consenter? Certain modern authors, including Simmons, thought that Locke's definition of tacit consent covered situations where the consenting party might not even be aware of the consent.

The difficulty for Locke included the extent to which the tacit consent was binding, its meaning, how it was given, its limits, and "how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all" (Locke II, 119). Locke answered the difficulty: Tacit consent is given by having "possessions" or "enjoyments" on any part of the government domination and that this obliges one to "[obey] the laws of that government" "during such enjoyment." I argue that many miss the point: For Locke, enjoyment of the land is tacit consent to the government's laws only for the period of the enjoyment.

Locke's tacit consent was only a sort of "local protection" that was limited to the period of enjoyment. A person must be aware of his or her presence on the government land; non-volitional agreements or mistakes do not equal consent. Yet Simmons claimed that tacit (silent) consent can bind exactly as express consent does if the following conditions are met:

1. It should be entirely clear that consent is appropriate and that the individual is aware of this.

2. There has to be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood or made known to the potential consenter.

3. The point at which expressions of dissent are no longer acceptable must be obvious or made clear to the potential consenter.

4. The means that expressing dissent must be reasonable and reasonably easily performed.

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[246] If consent is broadly defined as the taking of residence in a place, is this express consent? It is expressed by a positive act—the will to be protected under that territory's government as long as the government is legitimate and respects natural law. This would mean that for Locke, express consent covers not only actual agreements but also positive acts showing the will to consent. Dunn, for example, argued that it is useless to infer a modern idea of deliberate and voluntary consent from Locke's texts as Locke's idea was much broader. For Locke, it was sufficient that people were "not unwilling," or voluntary acquiescence was sufficient. Locke's many examples of consent (e.g., to the use of money) make more sense in this broad interpretation. Simmons, (1976), objected to Dunn's broad interpretation of consent in that it ignores the specific examples where Locke does speak of express consent as a deliberate—thus, this interpretation would result in Locke's theory being unconvincing. Taken from Simmons, (1976), 286–288.

[247] Pitkin, (1966), 39, 52.

[248] Simmons, (1976), 286–288.

5. The consequences of dissent cannot be extremely detrimental to the potential consenter.

Simmons noted that tacit consent is an unclear concept due to Hobbes's distinction between express and inferred contracts.[249] Some of Simmons's conditions, especially 4 and 5, are not satisfied, so tacit consent might not be valid grounds for political obligation in most truly political societies.[250] He is also aware of the different uses of the term "tacit consent." Yet for him, this is the only way tacit consent can protect individuals from becoming politically obligated unknowingly or against the individual will.[251] For Simmons, this specific "weakness of Locke's notion of consent has led some to question Locke's traditionally accepted status as a consent theorist."[252] But I argue that tacit consent can incur political obligation in situations that are not covered under Simmons's conditions. There is a certain difficulty with Simmons's need for awareness of tacit consent.

In examining Locke's *Treatise* section 119 (see above), readers find that contrary to Simmons's specific requirements, to Locke, the awareness of the consenter is not always necessarily required for tacit consent to be valid. Awareness can be inferred by having any enjoyments on the government territory. This makes the person subject "to obedience to the laws of that government."

I corroborate my arguments with section 121, in which Locke uses the term tacit consent:

> "Sec. 121. But since the government has a direct jurisdiction only over the land, and reaches the possessor of it, (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that; *the obligation any one is under, by virtue of such enjoyment, to submit to the government, begins and ends with the enjoyment*; so that *whenever the owner, who has given nothing but such a tacit consent* to the government, will, by donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other common-wealth;… whereas he, that has once, by *actual agreement, and any express declaration, given his consent to be of any commonwealth, is perpetually and indispensably obliged to be*, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it." (Locke II 121, emphasis added)

Here, Locke insisted that government has jurisdiction only as to land and possessors of it. As such, the obligation to obey the government concerns only enjoyments of the land and "begins and ends with the enjoyment." Tacit consenters are "at liberty" after the enjoyment ends. Locke then compared this situation to express consenters via the declaration or agreement, claiming that this form of consent obliges one "perpetually and indispensably." Locke's wording indicated that this sort of consent is a temporary and "local protection" that ends with the period of possession. The purpose is the protection of the individual's rights in his/her possessions within the government territory.

Regarding awareness, I use Hanna Pitkin's solution in '*obligation and Consent'*, heavily cited by modern authors. These relevant arguments also confirm the validity of Locke's natural law limitations and the superiority of natural law over positive law. She recognized the awareness

[249] Ibid., 274–291.
[250] Simmons, (1976), 279, 280.
[251] Simmons, (1976), 281.
[252] Ibid., 282.

problem and noted that binding a consenter without his or her awareness clearly goes against Locke's own words.

For Pitkin, Locke's real obligations of tacit consent derive from government conformity to natural law. For Locke, "you are *obligated to obey* because of *certain characteristics of the government*—that it is *acting within the bounds of a trusteeship based on an original contract"* that is "self-evident truths."[253] This way, there is no risk for any individual to be obliged by tacit consent to a tyrannical government because the validity of the consent is based on the conformity of the government to natural law. For Pitkin, Locke's use of tacit consent suggests the following:

1. By residing within their territories, we give our consent even to bad governments.

2. We are not obligated to bad governments.

3. Consent is still the grounds for political obligation.

For Pitkin, the best interpretation requires one to give up the notion that consent is a necessary political obligation. Whether individuals are obligated to obey the governing authorities depends mainly on whether the government adequately respects and protects the natural law or basic moral rights.

To solve the inconsistency in consenter awareness of obligation to a government, Pitkin proposed that for Locke, consent is not as important as it might seem. Government legitimacy is truly based on consistency with natural law. I agree partially with Pitkin's solution, but I think minimising the role of consent in Locke's theory ignores Locke's words. Simmons found Pitkin's solution "interesting" yet noted that it decreases the value of consent as a basis for political obligations. According to Simmons, it cannot be ignored that Locke clearly demonstrated that consent is specifically required as a basis for political obligation[254] (But see Locke II, 14, 38, 45, 95, 99, 122 above).[255] Simmons argued that Locke was merely confused as many other political theorists differ on "signs of consent" and acts of "implied consent."

Simmons concluded,

> "[S]ome of Locke's consent-implying enjoyments might in fact bind us to political communities under a 'principle of fair play', as developed by Hart and Rawls[256] or they might be thought to bind us under a principle of gratitude, as Plamenatz at one suggests[257] or under some other kind of principle of repayment. If so, then Locke's intuitions about obligation, and those of more recent consent theorists, may be essentially sound. Their mistakes may lie primarily in confusing obligation-generating acts with consensual acts,[258] and in overlooking the fact that the consent-

[253] Pitkin, (1966), 46-52, emphasis added.
[254] Simmons, (1976), 284.
[255] See references on consent on p. 43.
[256] Hart-Rawls's principle of fairness notes, "*[W]hen a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to gain advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission.*" Hart, (1955), 185-186; Rawls, (1964), 67. Cited in Nozick, (1974), 174-176; Simmons, (1976), 291.
[257] Plamenatz, (1968), 186.
[258] Hart, (1955), 186.

implying status of an act is substantially irrelevant to the obligation it generates."[259]

For Simmons, Locke confuses the terms and appeals to another possible ground of obligation, a principle of gratitude or reciprocity (fair play). But Simmons also recognizes that those grounds are valuable for political obligation for most people in most societies. This same confusion has been observed for the last 300 years.[260]

I argue that Pitkin and Simmons are partly right; a combination of their ideas would be best. Pitkin's view is correct in that the government must respect and protect individual rights, consistence with natural law. An individual cannot be obligated to obey a tyrannical government. And Simmons's interpretation of section 119 corroborates this idea. He agrees that when Locke "begins seriously to consider tyrannical and arbitrary forms of government later …*Locke frequently repeats his claim that we cannot bind ourselves to such governments by any means, compact included.*"[261] As such, consent is not always a sufficient basis of obligation, especially in the case of tyrannical governments that do not follow the natural law for the good of the whole. Simmons thus concluded that consent cannot always be seen as a sufficient basis for obligation[262]: "All that is needed is the additional premise that consent is not always sufficient to obligate."[263] Simmons thinks this would resolve the awareness issue while making consent a political obligation dependant on the government's execution of natural law.

This view supports my contention that Locke asserts the superiority of natural law. For Locke, the supremacy of natural law and its limits is eternal and superior to government and its positive law. The fact that consent was given to a government does not mean that the government can do as it pleases. It is obligated to follow natural law and better protect the individuals in accordance with its basic understanding. Individuals thus are not obligated to follow a tyrannical form of government that does not protect their natural rights (Locke II, 131, 135, 95, 164).[264] Locke noted that men cannot lose their natural liberties except when accepted better protection and security for their rights. Individuals have the freedom to resist a tyrannical government (Locke II, 135, 127, 149, 164, 171, 172).

I thus use Simmons's own contention that consent is necessary yet not always sufficient for political obligation. This interpretation is partially consistent with Pitkin's interpretation giving rise to the superiority of natural law and the fact that governments must act accordingly. However, I would not go as far as taking the consent altogether from Locke's requirement; both solutions together imply that consent is required except in cases of a tyrannical government's non-compliance with natural law.

Grotius (1625) supported this: "At the same time, we learn how things passed from being held

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[259] Simmons, (1976), 291.

[260] For another contemporary example of his confusion, see Plamenatz, (1968), 168, 170. Simmons, (1976) raises other difficulties with Pitkin's, (1966), solution in that it brings Locke's theory closer to the theory of "hypothetical contract," in which the quality of the government is decided by the limits placed by rational and self-interested original contractors. Simmons also mentions that Pitkin's vision of Locke brings Locke closer to modern authors "who d[e-]emphasize [an] individual's history[y] in a theory of political obligation to stress instead the quality of the government as the source from which our political obligations arise." This for Simmons is "clearly inconsistent with the radical individualism and voluntarism, so evident throughout the Second Treatise" (Simmons, (1976), 284).

[261] Simmons, (1976), 286, emphasis added. For Locke's references, see Locke II, 135, 127, 149, 164, 171, 172.

[262] Simmons, (1976), 286.

[263] Simmons, (1976), 285.

[264] See citations from p. 29.

in common to a state of property. It was not by the act of the mind alone …. *Property therefore must have been established either by express agreement, as by division, or by tacit consent, as by occupancy. … it is natural to suppose it must have been generally agreed.*"[265] Even for Grotius, it is not always necessary to have general mutual consent. Tacit consent is thus specifically considered by Grotius as an option in a compact.

Haakonssen (1985) held that for Grotius, "[t]he natural *suum* is conventionally extended through agreements to recognize a certain realm of things as private property. Such agreements can take the form of either explicit divisions and allocations or a tacit recognition of de facto seizures of things."[266] Tully (1980) confirmed this view: "Therefore, the institution of private property 'resulted from a compact and agreement, either expressly, as by a division, from a certain compact and agreement, or else *tacitly, as by seizure*…thus private property is based on agreement." Grotius himself thus also expressively used the term "tacit consent" as a possible basis of property rights. This is sufficient for me to hold that Locke did not intend a rigid general consent.

Locke's reasoning is followed in international law: Rabkin (1997), in his article on the influence of Locke and Grotius on international law institutions, concluded, "To the extent that institutions like the European Court of Justice and the European Court of Human Rights have taken on a primary role as guarantors of individual rights-over and above that of national judiciaries-they seem *faithful to Locke's doctrine as against that of Grotius: consent cannot be the ultimate measure of rights.*"[267]

This demonstrates the importance of the correct interpretation of Locke as it is recognized as the leading interpretation in international law. But this does not account for Grotius basing certain limited property rights on natural law—not merely on consent but on seizure from the common.[268] It further does not take into account that for Grotius, tacit consent, under certain circumstances, may be sufficient for transition within societies. So Locke appears to be similar to Grotius.[269]

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[265] Emphasis added. Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2

[266] Grotius, (1868 ed), *De iure*, Bk. II, Ch. 2. For a thorough discussion of the ambiguities in Grotius's property theory, see Tuck, (1979), 61, 161. See also Haakonssen, (1985), 242.

[267] Rabkin, (1997), 319, emphasis added.

[268] See Locke's labour theory and its roots in Grotius and the Roman law of occupation, p. 151.

[269] *In a comparison of Locke and Grotius's compact and the use of tacit consent,*

For Locke, it is impossible to obtain the consent of all men on earth because "[i]f such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him" (Locke II, 28). On the other hand, Locke is also clear that in order to be driven out of this natural liberating state, men have to mutually consent or make a compact on it: "*[N]ot every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community*" (Locke II, 14, emphasis added).

In other words, for Locke, people can make agreements without leaving the state of nature while only a specific general "compact" can take men out of the state of nature (see Locke II, 95, which states that it is clear that the only way to change the conditions of natural liberty is by mutual consent among men for the better protection of their property).

See also Locke II, 122. Here, Locke makes it clear that it is only "*a local protection*" that "*makes not a man a member of that society."* or, in other words, perpetually subject to it. For this sort of perpetual commitment, "*an express promise and compact*" is needed. If Locke's words are taken literally, at the end of section 122, he confirms that it is only via express consent that one can be obliged perpetually to a government. So Locke would claim that the formation of societies requires an express compact; nothing else but a mutual contract could take men out of the state of nature. See Locke II, Para. 97, where the word "compact" is used to emphasise that this "original compact" would signify nothing if not acted upon.

Tacit consent confirms the superiority of natural law; even with the added basis of consent, governments must follow natural law for the peaceful preservation of the rights of all individuals. Locke negated strict express consent by specifically noting the practical possibility of a general compact such as the mutual consent of all mankind (Locke II, 28). Yet for Locke, consent was specifically required after the creation of societies (Locke II, 38, 45, 50). Locke explained that at the beginning, labour created natural property rights in movables and land. It was after the increased needs, creation of societies for protection, and the introduction of money that the basis of property rights included human consent and agreements.

After the creation of societies and governments and with the introduction of money, property rights become regulated by human agreements for the better security of the whole and convenience of life. Anything more than the restricted property rights of labour from the common requires human intervention and regulation for the general order. However, those agreements are conventional and are still subject to the guidance of the law of nature.

To solve the problem of the harsh individual consent that Locke himself says is impossible, Locke raises the notion of tacit consent. I argue for the combination of Pitkin's and Simmons's solutions. Locke notes that human consent is an important additional basis for property rights. However, Locke merely includes human will and consent as a further basis for private possession. It is not a sufficient ground. The government must also respect natural law so that the rights of the individuals are respected and better protected. Individuals are not obligated to consent to tyrannical governments. It is not just tacit consent that is required but also government accordance with natural law for the better protection of the rights of the whole.

In other words, the natural law and its limitations on government are superior. Consent is required and is an added basis for the positive law of property rights, convenient for the specific needs of societies. But it must be flexible in conforming to the natural law and its restrictions, as the superior and divine moral norms.

It is thus perplexing that if to Locke, a mutual compact for members of the society is impossible (Locke II, 28), then a mutual agreement is necessary to overrule eternal natural liberties.

Olivercrona, (1974) concluded that Locke, in spite of his denial of the compact theory (Locke II, 28), indirectly reached the same conclusion as Grotius on the compact. "Locke persists in rejecting the compact theory concerning the origin of property, because he negates the existence of a direct agreement as to the division of the earth. But indirectly an agreement is nevertheless taken to be the basis of the actual distribution of property, namely, the agreement to use money." Olivercrona, (1974), *Appropriation in the State of Nature*, 229. Olivercrona explained that inequality of possessions is indirectly governed by agreements because Locked agreed "to disproportionate and unequal Possession of the Earth" via the introduction of money while money "has its value only from the consent of Men" (Locke II, 50). Olivercrona further added that in society, the property of private men is regulated by laws (Locke II, 45, 50). But the laws derive their binding force from the social compact. Indirectly, therefore, the distribution of property is based on agreement. In this sense, the compact theory is ultimately revived. Olivercrona, (1974), *Appropriation in the State of Nature*, 229.

Simmons, (1992) criticises Olivercrona's theory of the revival of the compact by saying that Locke already solved this problem with the use of labour; there is no necessary appeal to a general compact. Simmons essentially opposes a compact in Locke as Locke himself denied it specifically when explaining the practical impossibility of such consent (Locke II, 28). Simmons, (1992), Ch. 5.5, 300.

I join Simmons in his argument in the discussion of tacit consent. Consent is an added basis but is not always sufficient. This is especially the case under a tyrannical government. The government must also justly apply the law of nature for the consent to be valid.

3.1.6.5 Superiority of the law of nature in Locke's predecessors

The superiority of natural law is not new to natural law defenders. Within this section I use Grotius's and Pufendorf's juristic theory of natural law (17^{th}–18^{th} centuries) and body of higher norms or rules securing natural rights. The role of the state is to secure and confirm natural law.[270] Aquinas also held that natural law is an eternal law that is the "essence of divine wisdom by which it guides all acts and movements."[271]

In his *De Jure Belli ac Pacis Libri Tres* (The Law of War and Peace), Grotius wrote that the law of nature cannot be changed, even by God:

> "Now the Law of Nature is so unalterable, that it cannot be changed even by God himself. For although the power of God is infinite, yet there are some things, to which it does not extend... And this is Aristotle's meaning, when he says, that some things are no sooner named, than we discover their evil nature. For as the substance of things in their nature and existence depends upon nothing but themselves."[272]

For Grotius, positive law has to be construed as close as possible to the meaning of the law of nature.

> "And it was but reasonable to suppose, that in making this introduction of property, they *would depart as little as possible from the original principles of natural equity*. For *if written laws are to be construed in a sense, approaching as nearly as possible to the laws of nature*, much more so are those customs which are not fettered with the literal restrictions of written maxims. From hence it follows that in cases of extreme necessity, the original right of using things, as if they had remained in common, must be revived . . . ."[273]

For Grotius (whom Locke followed), the positive law of property should represent and protect the law of nature. The positive law should depart from the natural law and equity as little as possible. Both Locke and Grotius held that the aim of society is to protect the *Suum cuique tribuere* [274] with the help of the positive law.[275] The positive law is there to protect the natural law. To demonstrate the same, Grotius cites Cicero (on whom he heavily relied): "Cicero also agrees as to the superiority of natural law; '. . . if men adhered to written laws, but if these were abolished, it would be considered as his own by the law of nature.'"[276]

Salomon interpreted Grotius as follows: "it was never the intention to destroy all remnants of communal liberties. *On the contrary, their intention was to depart as little as possible from natural equity*. . . . Natural law prescribes as a moral obligation to the society of owners of private property."[277] It is this interpretation of Grotius that I argue to be Locke's view of

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[270] Pound, (1914), 623 citing Blackstone, I. 4, I.
[271] Aquinas, (1265-1274), *Summa Theologica*, Part II, Question 91, Art. 1.
[272] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10, Para. 4. "Of this kind is the evil of certain actions, compared with the nature of a reasonable being. . . . Whereas in reality there is no change in the unalterable law of nature, but only in the things appointed by it, and which are liable to variation. For example, if a creditor forgive me the debt, which I owe him, I am no longer bound to pay it, not because the law of nature has ceased to command the payment of a just debt, but because my debt, by a release, has ceased to be a debt." Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10, Para. 4.
[273] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 6, Para. 1 (emphasis added).
[274] Defined as the mastery of person, actions, and possessions. See chapter on *suum*, p. 121.
[275] Grotius, (1625), *War and Peace*, Bk. I., Ch. 2, Sec. 1, Para. 5.
[276] Ibid., Bk. II, Ch. 2, Sec. 6.
[277] Salomon, (1947), 80-81 (emphasis added).

natural law, as demonstrated from his own texts above.

Pufendorf

For Pufendorf, too, natural law is binding perpetually on all humankind, without being subject to changing circumstances of time and place (unlike the positive law).[278] Pufendorf affirmed the superiority of natural law as undeniable in its derivation from human nature; each human has the liberty to act as he or she wishes for the preservation of the self, if in accordance with reason. However, no human can live without the obligations of the law of nature.[279]

> "And so it will be a fundamental law of nature, that 'Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude, which is peaceful and agreeable at all times to the nature and end of the human race." . . . [B]y a sociable attitude we mean an attitude of each man towards every other man, by which each is understood to be bound to the other by kindness, peace, and love, and therefore by a mutual obligation."[280]

The citation demonstrates that for Pufendorf, there is a mutual and superior obligation to avoid injuring one another, or to follow the law of nature. I use the above examples from Pufendorf and Grotius (as influences on Locke) to counter the traditional interpretation of Locke as suggesting that natural law restrictions disappear after the creation of societies, leaving consent as the basis for full ownership of private property rights.

3.1.7 Conclusions on Locke and the superior place of natural law

Locke's own references from the *Second Treatise* as demonstrated above suggest that he holds natural law to be superior even after the creation of society; this is also confirmed by modern authors' interpretations and other natural law authors such as Grotius and Pufendorf. There is thus nothing new in this interpretation. The superiority of natural law is confirmed by almost all natural law thinkers, from ancient to current, including thinkers on whom Locke relied. My demonstrations from different texts only confirm that Locke followed this natural law thinking and gave natural law a superior moral place in guiding positive law.

Locke's text demonstrates that he never intended to do away with natural law limits and create private property without limits, contrary to the claim of Macpherson and his followers.[281] This and the following chapter demonstrate that Locke saw natural law as the eternal, superior law that is timelessly valid, even after private property rights were established. His texts show that even after the introduction of money, and after Locke added consent as a necessary condition for governmental property rights, natural law limits still stood as a moral guide.

[278] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib.3, Cap. 1.
[279] Pufendorf, (1672), *De iure Naturae*, Vol. II, entire Lib.1. See footnote 280 below for a direct quotation.
[280] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 19.
[281] See Macpherson, (1962), 210-273; Strauss, (1953), 221-248; Schlatter, (1951), 151; Day, (1966), 207–220; Squadrito, (1979), 255–258.

3.2 *Locke's understanding of natural law*

3.2.1 Precepts of natural law

Separate from the thesis arguments, this specific allows the reader to better understand Locke's use of natural law. As superior moral guidelines, the principles of natural law are recognized by natural law historians as restricted to the most important general principles so that they can be interpreted according to society's relevant needs, capacities, and time.[282] For Locke, "the Natural law is unwritten, and *nowhere to be found but in the minds of men*, they who through *passion or interest shall miscite and misapply* it, cannot so easily be convinced of their mistakes where there is no established judge" (Locke II, 136, emphasis added).

Locke explained that the law of nature can only be found within the minds of men. Passions or self-interests blind the minds of men so that they misapply natural law. It is thus impossible for the law of nature to be written unless the majority becomes rational, for it will be misapplied by the irrational part of the population. Locke therefore asserted that only rational men can apply natural law limits justly, for they understand natural law from a sincere, disinterested point of view. In other words, natural law can only be found in the mind of those men who are rational and sincerely act for the good of the whole. The rest are blinded by passions and self-interests.[283]

Rommen (1936) asserted this indeterminacy of natural law precepts, noting that the natural law remains latent so that the positive law can better complete it for any given societal capacity:

> "Under a constitutional, free government with the added safeguards of a bill of rights there exists *a strong presumption that the positive law is a determination and a derivation of the natural law*. For this reason and also because of the consequent de facto legal peace, which enables and permits men to accept without further scrutiny the order of positive law, *the idea of natural law remains as it were latent*."[284]

Simmons (1992) claimed that Locke did not clearly define the law of nature.[285] The different bases of argumentation[286] might explain why Locke left the definition of natural law vague; this would leave the range of interpretation wide enough to suit different societal conditions. Grotius called the law of nature the "law which is a law not written, but created by nature."[287] Pufendorf noted,

> "Again, since many precepts of the natural law are *indefinite*, their application being left to the discretion of every man, the civil law, with a view to the order and tranquility of the state, is accustomed to assign to such actions their *time, manner,*

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[282] S.L.R., (1957), 484. The exercise of a right depends in part upon a "given society's concrete possibilities." Ibid., 102. Jacques Maritain (Thomists) goes so far as to say that "it is fitting at times, as history advances, to forget the exercise of certain rights which we nevertheless continue to possess." Ibid., 102–103.
[283] See Locke II, 12, 124 and more on p. 29, p. 32, and p. 177.
[284] S.L.R., (1957), 511 citing Rommen, (1936), 262 (emphasis added).
[285] See his analysis on p. 69.
[286] See p. 9 and Simmons, (1992), 11, 48 and the book as a whole.
[287] Straumann, (2006), 338 citing Grotius, (1868 ed.), *De iure*, Bk. 1, Ch. 4. Grotius provides no clear list of the principals of the law of nature. See Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 6. Here, one can see that for Grotius, as followed by Locke, the "written" positive law of property should represent and protect the law of nature that is unwritten.

> *place, and persons, also to determine other circumstances*, and at times to encourage men by rewards to undertake them. Also, if there is any obscurity in the natural law, it belongs to the civil law to explain it."[288]

Pufendorf, as a source for Locke, confirmed that the law of nature is indefinite and applies to different circumstances. Locke's texts confirmed the above-mentioned indeterminacy of natural law precepts by revealing no systematic list of natural law provisions.[289] Locke is vague and suggests that natural law cannot be understood by all men but only by those who are attuned to the law of reason via the constant use of reason, or rationale. He also indicated that passions and self-interests blind people to the true limits of reason. Locke thus admitted that "the Natural law is unwritten, and *nowhere to be found but in the minds of men.*"[290]

Rommen (1936) summarised the basic maxims of natural law as follows: "What is just is to be done, and injustice is to be avoided" and "Give to everyone his own."[291] However, the general indeterminacy of natural law does not mean that natural law is to be applied arbitrarily. Natural law is moral in nature, with protected individual rights and correspondent obligations.

Grotius also confirmed the connection between right reason and morality: "the dictate of right reason, showing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature."[292] The law of nature is recognized to be moral by rational nature. To Locke, the preservation of all mankind is a "fundamental law of nature" (Locke II, 16, 135).[293]

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[288] Pufendorf, (1673), *On the Duty of Man*, Bk. II, Ch. 12, Para. 6, On Civil Laws in Particular.

[289] Locke II, 12. See p. 29.

[290] Locke II, 136, emphasis added. See also Locke II, 12, 124.

[291] Rommen, (1936), 220. See Kenealy, (1955) who summarises, "Natural law does indeed imply the existence of some human rights which are absolute and inalienable, such as the right to life, worship, marriage, property, labor, speech, locomotion, assembly, reputation, etc. These are absolute in the sense that they derive from human nature; they are not mere hand-outs from the state; the state is bound to protect them and cannot destroy them even though, by physical force, the state has sometimes prevented their exercise. They are not absolute in the sense that they are unlimited in scope. It is a commonplace in classical natural law philosophy that human rights, even the most fundamental mentioned above, are limited. They are limited in the sense that they are subject to specification, qualification, expansion and contraction, and even forfeiture of exercise, as the equal rights of others and the demands of the common good from circumstance to circumstance, and from time to time, reasonably indicate. Human rights are absolute only in the sense of the minimal requirements of a just and ordered liberty." Kenealy, (1955), *Whose Natural Law?*, 259, 263–264, cited in S.L.R., (1957), 483-484. See also Adler, (1942), 205, 216–219. See also Justinian, (533 AD), Bk. 1, Title 1, Sec. 3.
"Man, considered as a creature, must necessarily be subject to the laws of his Creator. . . . These are the eternal, immutable laws of good and evil, to which the Creator Himself in all His dispensations conforms; and which He has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly, should hurt nobody, and should render to everyone his due. . . . This law of nature . . . is binding over all the globe, in all countries and at all times; no human laws are of any validity if contrary to this." Rommen, (1936), 220 citing Blackstone, *The Five Thousand Year Leap*, 138.

[292] Grotius, (1925), *War and Peace*, Bk. I, Ch. 1, Sec. 10.

[293] Mankind as a whole is to be preserved as much as possible.
Sec 134: "*the preservation of the society, and (as far as will consist with the public good) of every person in it...*" (emphasis added).
Sec. 135: "so much as the *law of nature* gave him for *the preservation of himself, and the rest of mankind"...* "*the fundamental law of nature being the preservation of mankind, no human sanction can be good, or valid against it*" (emphasis added).
See also Sec 159: "That *as much as may be, all the members of the society are to be preserved…*" (emphasis added).

Locke described the law of nature as a set of moral guidelines found within human nature.[294] The aim of natural law is the peaceful and safe preservation of all mankind (Locke II, 7). Locke noted, "*the first and fundamental natural law*, which is to govern even the legislative itself, is the *preservation of the society,* and as far as will consist with the public good) of *every person in it*" (Locke II, 134, emphasis added), "which nature, that willeth the *preservation of all mankind as much as is possible* (Locke II, 182, emphasis added).

For Locke, the first fundamental law of nature is for all mankind to be preserved. The second fundamental natural law, a negative inference of the first, is that no one be harmed: "[A]ll men may be restrained from invading others rights, and from *doing hurt to one another*" (Locke II, 7, emphasis added).

No harm to anyone is emphasised heavily as the most important principle of natural law after the safe preservation of mankind. It is the basis for natural law limits.[295] In general, natural law calls for self-preservation conditioned on the obligation to respect the preservation of others for the long-term safe preservation of the whole.[296] The no-harm principle applies to other obligations deriving from natural law, depending on their remoteness from this principle of doing no harm.[297] Everything that physically harms another is clearly prohibited, such as murder, theft, and adultery. Other principles are less clear when they concern not harming others in a way that may decrease the possibility of life preservation by pursuing harmless goals. Examples may include divorce, slander, and damage to reputation. The fact that each individual has the right to enjoy his or her own peaceful, harmless activities without interference puts a duty on him or her not to interfere with the activities of others. Rommen proposes slander as a relatively indirect natural law principle because it does not harm physically, but its damaging consequences may decrease another's abilities to pursue his or her own harmless goals.[298]

Within the *Second Treatise*, Locke states that each is "born to" a state that includes duties and rights (Locke II, 6, 128). The duty pertains to the preservation of the self and, in the measure of possibility, the preservation of others and the rest of mankind. "Every one as he is bound to preserve himself, and not to quit his station wilfully; so by the like reason when his own

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And Sec 171: "conduce to the *preservation of himself, and the rest of mankind*. So that the end and measure of this power, when in every man's hands in the state of nature, being the *preservation of all of his society, that is, all mankind in general...*" (emphasis added).
For similar inferences, see also Locke II, 149, 183.

[294] See Locke, (1689), *Human Understanding*, Bk. I. Ch. 3; Bk. II. Ch. 4, Ch. 22, Bk. IV. Ch. 6, Ch. 20.

[295] For references, see natural limits and no harm on p. 123.

[296] See S.L.R., (1957), 480: "[M]an's natural inclinations or desires, as classified and ordered by his reason, e.g., the inclination to self-preservation, to procreation, to the acquiring and keeping of property, as tempered by the realization of long-run considerations as well as the immediate, and by the demands of the common good (since man has an equally basic inclination to sociability and is thus a social animal) as well as his individual good."

[297] I.e., Adler, (1942), 205, 397.

[298] The damage to one's reputation may lessen his ability to peacefully pursue harmless goals. Rommen, (1936), 217.

preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind" (Locke II, 6). This means respect for the same rights to others or not harming others' life, liberty, health, limbs, or goods (Locke II, 6). This duty refers not only to property such as material possessions but also to the right to life and liberty to peacefully pursue harmless goals for preservation and convenience, without infringing on others' rights. This, if respecting natural law limits, seeks to guarantee that no one is harmed.

In general, the basic principles of natural law are to enjoy natural liberties and possessions while harming no one. These basic principles of natural law comprise the right to life, property, liberty, and labour, as long as no one is harmed. The role of the governmental state is to better protect those rights and respect them.[299] Those rights are not absolute in the sense that they have no limits. Natural law is restricted by the equal rights of others.[300]

Simmons summarises Locke's "natural obligations" (Locke II, 6 and 118) as follows: (1) the duty to preserve self (not to put the self in danger); (2) the duty to preserve others (in the measure of possibility or if there is no conflict with the preservation of self); (3) the duty not to kill or "take away the life" of another and not to injure, not to do what "tends to destroy" others by impairing their "liberty, health, liberty, or possessions" (Locke II, 6); and (4) the duty not to destroy any living creatures in possession except for a nobler cause than preservation of existence.[301] Tully (1980) also confirms the basic principles: "the preservation of each, including comfort as well as support, entails three natural rights; to preservation, to the liberty of preserving oneself and others, and to the material possession necessary for preservation. Rights to life, liberty and possession are completed and regulated naturally in the state of nature . . . ." Tully further emphasises that for Locke, political power "can have no other end or measure . . . but to preserve the Members of that Society in their Life, Liberties, and Possessions."[302]

To resume, for Locke, in general, the law of nature is unwritten. However, it is moral in nature, corresponding to the aim of natural law being the peaceful preservation of all mankind (Locke II, 7).[303] Locke states that the fundamental natural law is the preservation of all mankind and every person in it and no harm to anyone (Locke II, 7, 134). Further, "and if "not in competition, ought he, as much as he can, to preserve the rest of mankind" (Locke II,

[299] For references, see p. 29 and p. 69.
[300] See S.L.R., (1957), 483-484.
[301] Based on Locke II, 6, Simmons, (1992) further demonstrates that Locke divides duties into additional categories:

1. Acts that are completely forbidden, such as theft and murder, as the class of perfect negative duties. Locke, (1689), *E.L.N.*, Essay 7, Para. 193–195. In this regard, Locke writes that "all negative precepts are to be obeyed," but "positive commands only sometimes on occasions. But we ought always to be furnished with the habits and dispositions to those positive duties in a readiness against those occasions." Simmons, (1992), 338–341 citing Fox-Bourne, (1876), Sec. 1, 393, "Letter to Grenville,".
2. Duties requiring sentiments, such as affection for parents and love of others. Locke, (1689), *E.L.N.*, Essay 7, Para. 195.
3. Duties where "the outward performance is commanded" yet "where we are not under obligation continuously, but only at a particular time and in a particular manner." Examples include worship of God, consoling the distressed, feeding the hungry, and relieving the troubled. Locke explains, "for we are not obliged to provide with shelter and to refresh with food any and every man, or at any time whatever, but only when a poor man's misfortune calls for our alms and our property supplies means for charity." Locke, (1689), *E.L.N.*, Essay 7, Para. 195. "Cases where the action in itself is not commanded but only circumstances accompanying it." One, for example, is not bound to "hold a conversation about his neighbour," yet if one starts this he is then bound to handle it in a "candid and friendly" manner. Locke, (1689), *E.L.N.*, Essay 7, Para. 195. Simmons, (1992), 338–341.

[302] Tully, (1980), 163, relying on Locke II, 171.
[303] See analysis on p. 99.

6) and not kill or harm others in any way that might damage life, liberty, health, limbs, or goods.[304] It is also clear that one cannot kill animals in possession unless it is for a nobler cause than self-preservation.[305]

3.2.2 Interdiction of natural law violation and its consequences

For Locke, the natural law was given for our better protection and peaceful preservation (Locke II, 7). Not following it goes against the safe preservation of mankind. Locke writes, "In transgressing the law of nature, the offender declares himself *to live by another rule than that of reason and common equity*" (Locke II, 8, emphasis added). Reason thus guides the "common equity" or the morality of the law of nature. Going against reason is dangerous to mankind and its preservation. Locke considers reason to be "that *measure* God has set to the actions of men, for their *mutual security*" (emphasis added, see below):

> "And thus, in the state of nature, one man comes by a power over another; but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; *but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint:* for these two are the only reasons, why one man may lawfully do harm to another, which is that we call punishment. *In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity,* which is that measure God has set to the actions of men, for *their mutual security;* and so he *becomes dangerous to mankind, the tye, which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature,* every man upon this score, by the right he hath to preserve mankind in general, *may restrain, or where it is necessary, destroy things noxious to them* . . . ." (Locke II, 8, emphasis added)

According to Locke, not following the law of nature goes against reason and common equity, the same measures given by the Creator to all men for their mutual protection and long-term preservation. Natural law entails using reason for the common equity of all mankind, for "the peace and preservation of all mankind" (Locke II, 7). Any offender of natural law puts at risk this peace and becomes a danger to mankind.

Locke adds,

> "Besides the crime which consists in *violating the law, and varying from the right rule of reason,* whereby a man so far becomes degenerate, and *declares himself to quit the principles of human nature,* and to be a noxious creature, there is commonly injury done to some person or other, and some other man receives damage by his transgression: . . . a *particular right to seek reparation from* him that has done it: and any other person, who finds it just, may also join with him that is injured, and assist him in recovering from the offender so much as may make satisfaction for the harm he has suffered." (Locke II, 10, emphasis added)

It is a crime to violate natural law and distance the self from the right guidance of reason. This violation means that one discards the principles of human nature while becoming a danger to

[304] Locke II, 6. See also Locke II, 128 and p. 96.
[305] See full discussion in the chapter on limits on p. 245.

others. The transgression of the natural law makes the person a danger to mankind; some may be harmed by acts that violate the natural law. Violating the law of nature is clearly stated by Locke as "varying from the right rule of reason," "quit[ting] the principles of human nature," or becoming a dangerous creature (Locke II, 10).

Locke explains that a man transgressing the law of nature is a danger to mankind and its peaceful preservation. A man who does not follow reason, the same "common rule and measure God has given to mankind," goes against the human species. Not following reason places one in a state of war against the rest of mankind.

Locke states that there are

> "two distinct rights, the one of *punishing the crime for restraint, and preventing the like offence*. . . . [H]e who has suffered the damage has a right to demand in his own name, and he alone can remit: the damnified person has this power of appropriating to himself the goods or service of the offender, by *right of self-preservation*, as every man has a power to punish the crime, *to prevent its being committed* again, by the right he has of preserving all mankind, and *doing all reasonable things he can in order to that end*: . . . a criminal, who having *renounced reason, the common rule and measure God hath given to mankind*, hath, by the *unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed* as a lion or a tiger, one of those wild savage beasts, *with whom men can have no society nor security*." (Locke II, 11, emphasis added)

The same is noted in Sec. 16: "because such men are not under the ties of the common law of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures" (Locke II, 16). Thus, for Locke, without the common law of reason, there must be only a conflict of desires resulting in violence. Men who do not use reason might be dangerous to the rest of mankind because in following their own interests, they might harm others through unjust violence. Locke then writes, "for, by the *fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred*" (Locke II, 16, emphasis added).

Freedom is granted by the use of reason and free choice. Locke says that it is not at all liberating to remove reason from the definition of *human*. He insists that such a removal can only make men like wild animals only governed by passions and desires.

> "The freedom then of man, and liberty of acting according to his own will, *is grounded on his having reason, which is able to instruct him in that law he is to govern himself* by, and make him know how far he is left to the freedom of his own will. To turn him *loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free; but to thrust him out amongst brutes, and abandon him to a state as wretched*, and as much beneath that of a man, as theirs." (Locke II, 63, emphasis added)

Locke considers a person who renounces reason to be "revolting" against his "own kind" and as such descends to the level of beasts that harm each other for their own gain (Locke II, 11). "[F]or quitting reason, which is the rule given between man and man, and *using force, the way of beasts, he becomes liable*" (Locke II, 181). Locke is thus clear as to the consequences of not following the law of nature and causing harm: It brings men to the same level as wild beasts, inconsistent with the safe protection of mankind. It makes one a danger to mankind such that not only the victim but also the rest of mankind reacts to being placed in danger and

seeks reparation.[306] Further, Locke states,

> "[T]he aggressor makes of his own life, when he puts himself into the state of war with another: for having *quitted reason*, which God hath given to be the rule between man and man, and the common bond whereby human kind is united into one fellowship and society; and having *renounced the way of peace which that teaches*, and *made use of the force of war, to compass his unjust ends upon another*, where he has no right." (Locke II, 172, emphasis added)[307]

Dunn (1969) concludes that Locke's state of nature

> "is a state of equality and a state of freedom (Locke II, 4)...But thought it is a state of liberty it is not a state of licence; thought apolitical, it is not amoral (Locke II, 6). The reason why men are equal is their shared position in a normative order, the order of creation. If they infringe the norms of that order, they forfeit their normative status of equality. Indeed they lower their status to that of lower members of this order- they become normatively beasts and may be treated accordingly by other men." (Locke II, 8, 10, 16, 163, 172)[308]

Those passages demonstrating the consequences for those who do not follow reason may make Locke seem cruel, seeking the preservation of rational humans while deeming the rest to be "dangerous beasts" to be "destroyed" (Locke II, 11). Yet even the traditional school of interpretation, which mostly admits the morality in Locke's state of nature (compared to Hobbes), has not presented this argument.[309] I argue that those passages specifically refer to "criminals," "murderers" who have renounced reason to use unjust violence and "slaughter" others while risking the preservation of innocents. Locke's strong vocabulary concerns a state of war[310] whereby the offender uses "force without right upon a man's person" (Locke II, 19) or "where it is necessary" (Locke II, 8) as self defence by the right of "self-preservation" to "prevent it being committed"; in other words, in "preventing the like offence" (Locke II, 11). The first action to be done against murderers is restraint. Locke notes that "all men may be restrained from invading others rights. . . . preserve the innocent and restrain offenders" (Locke II, 7).[311] Further, one cannot treat a criminal arbitrarily, even for punishment, "but *only* to *retribute* to him, so far as *calm reason and conscience dictate*, what is *proportionate to his transgression*, which is so much as may *serve for reparation and restraint*" (Locke II, 8, emphasis added). The purpose is only to restrain the criminal, in proportion to the transgression done and in accordance with the dictate of reason.

When Locke speaks of the state of war, he explains that "when the actual force is over, the state of war ceases between those that are in society, and are equally on both sides subjected to the fair determination of the law" (Locke II, 20). Here, Locke suggests that the right of the victim to treat the aggressor with similar force to prevent further aggression ended when the

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[306] For support of this difference between animal and men, see Grotius's understanding, p. 174.
[307] Locke II, 172. See also Locke II, 163, on p. 94.
[308] Dunn, (1969), 106-107.
[309] Even Macpherson, (1962), 246 finds morality in Locke's state of nature (p. 67). For a detailed analysis of modern morality within Locke's state of nature, see p. 79.
[310] "[B]y the *unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed* as a lion or a tiger, one of those wild savage beasts, *with whom men can have no society nor security"* (Locke II, 11, emphasis added). Man "made use of the *force of war,* to compass his *unjust ends upon another"* (Locke II, 172).
[311] Locke II, 7. This vocabulary is also used in Locke II, 8, 11.

actual use of force ceased, or when "the aggressor offers peace, and desires reconciliation" (Locke II, 20). Then, both parties have to seek a "fair determination of the law."

Additionally, for Locke, the most fundamental natural law is the preservation of all mankind (Locke II, 7): "and the *fundamental law of nature being the preservation of mankind*, no human sanction can be good, or valid against it" (Locke II, 135, emphasis added). Destruction of life, even the wicked and animals (as seen later in Locke II, 6, 16, 159), is contrary to the purpose of natural law, which seeks the preservation of the whole.

To Locke, the preservation of every person in society is fundamental: "as the first and *fundamental natural law*, which is to govern even the legislative itself, is the *preservation of the society*, and as far as will consist with the public good) of *every person in it*" (Locke II, 134, emphasis added). Further "[this] nature . . . willeth the *preservation of all mankind as much as is possible*" (Locke II, 182, emphasis added).

According to Locke, it is clear that all members of society are to be preserved by the government "as much as may be." Locke also clearly states that even the guilty members of society who have harmed others are to be preserved, as long as it is no injustice to the innocent members. Sec. 159 notes "[t]hat *as much as may be, all the members of the society are to be preserved . . . for the end of government* being the *preservation of all, as much as may be, even the guilty are to be spared*, where it can *prove no prejudice to the innocent*…." (Locke II, 159, emphasis added).

Locke also writes that "for, by the *fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred*" (Locke II, 16, emphasis added). No one can destroy any life, including self, others, or any other form of life in possession, for the Creator made all: "But though this be a state of liberty, yet it is not a state of license: though man in that state have an *uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession*" (Locke II, 6). Locke further noted that "[n]o body can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it" (Locke II, 23).

Locke's discussion on slavery also demonstrates his view on the right to arbitrarily destroy another. Liberty is linked to self-preservation, and one cannot give to anyone this power:

> "This *freedom from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together*: for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases. *No body can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it.*" (Locke II, 23, emphasis added).[312]

Sec. 171 of the *Second Treatise* notes that

> "the end and measure of this power, when in every man's hands in the state of nature, *being the preservation of all of his society, that is, all mankind in general*, it can have no other end or measure, when in the hands of the magistrate, but to *preserve the members of that society in their lives, liberties, and possessions; and so*

[312] Emphasis added. See citations on p. 126.

cannot be an absolute, arbitrary power over their lives and fortunes, which are as much as possible to be preserved." (Locke II, 171, emphasis added)[313]

If possible, no government should have arbitrary power over life, liberty, or possessions of individuals that are to be preserved. In addition, by virtue of men being equal in their common capacity to reason, humans should not destroy the life of another or harm another's "liberty, health, limb, or possessions" (Locke II, 6). Locke continues that in "being furnished with *like faculties, sharing all in one community of nature*, there cannot be supposed any such *subordination among us, that may authorize us to destroy one another*, as if we were made for one another's…" (Locke II, 6, emphasis added; Locke II, 23, 171).[314] Locke goes further and suggests that men should not only preserve themselves but also participate in the preservation of the rest of mankind when their own preservation is not in competition (Locke II, 6).[315]

Locke, in his state of nature, allows a certain freedom of aggression because all have the equal right to self-preservation, and no one may destroy another for pleasure (including animal life) (Locke II, 6). But the aggression must only restrain the criminal in proportion to the transgression and in accordance with the dictate of reason (Locke II, 8). As demonstrated in the introduction, Locke is known as a great supporter of individual rights against tyranny.[316] His most fundamental law of nature is the preservation of mankind and each person in it and avoiding doing harm (Locke II, 7, 134, 182, 16, 159). I intend to demonstrate within this thesis that Locke's state of nature is moral and appeals to the obligation to preserve not only the self, but when not in competition, others.[317] The purpose of this thesis is to reveal Locke's morality for the good of all persons not only within the state of nature but also with his use of reason.[318]

Dunn (1969) writes that Locke does not suggest that men may kill the wicked: "[I]ndeed they are obliged not to do so, . . . both because the law of nature enjoins the preservation of all men 'as much as possible'."[319] He explains that for Locke, killing the wicked also goes against Locke's general prohibition of the waste of natural resources. Dunn points to Locke's statement that the safety of the innocent and even the wicked is preferable (as long as preserving the wicked does not conflict with preserving the innocent).[320] Dunn also says that Locke could not have desired the destruction of any human, even the wicked, unless it was to prevent like aggression on the innocent. This would be against the purpose of natural law, which seeks the preservation of all mankind and "every person in it" (Locke II, 134).[321]

3.2.3 Becoming rational is a state of awareness of the law of nature

A rational person is aware of the law of nature. For Locke, for the person who acts out of self-interest, the law of nature is hidden and remains unclear to him or her. When one starts following and putting into practice the rules of reason, then the law of nature and its limits[322]

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[313] See full citation on p. 102.
[314] See full citation on p. 76.
[315] See entire chapter on preservation of others, p. 99 and following.
[316] See note 7.
[317] See analysis on p. 73, p. 79, and p. 99.
[318] See the chapter on reason p. 165.
[319] Dunn, (1969), 107 relying on Locke II, 181 and 182.
[320] Dunn, (1969), 107, relying on Locke II, 6, 11, 16, 37, 46. For additional modern authors' confirmation of Locke's moral intentions, see p. 79.
[321] For support of Locke's desires for the preservation of all persons in society, as is the aim of natural law, see note 99.
[322] For an analysis of Locke's natural law limits, see p. 210.

become clear: In Locke's "Essay on Human Understanding", he makes this clear: "I allow therefore a *necessity*, that *men should come to use of reason before they get the knowledge of those general truths*" (emphasis added).[323]

To demonstrate this argument of the need to become aware and know the law of reason, I start with Locke's explanation as to Adam and his descendants. Locke saw a clear difference regarding the full capacity of reason granted to the first humans God created, Adam and Eve, and their offspring—"having another way of entrance into the world, different from [Adam], by a natural birth, that produced them ignorant and without the use of reason" (Locke II, 57). For Locke, the first humans lived under the rule of reason. Adam's descendants, however, are born ignorant of the law of reason. "Adam's children, being not presently as soon as born under this law of reason, were not presently free" (Locke II, 57).As such, one can infer that all the descendants of Adam and Eve are born to an unsafe state of nature, being without the guidance of reason.[324]

Locke could not have meant that the law of reason only applied to the first beings created by God (Locke II, 7, 11)[325]; for Locke, all mankind has the capacity to reason. I argue that Locke means all people have the capacity to reason, but only those who actually follow reason and act above their own self-interests can become aware of the law of nature and its limits.[326] In Locke's words,

> "The *law, that was to govern Adam, was the same that was to govern all his posterity, the law of reason*. But *his offspring having another way of entrance into the world*, different from him, by a *natural birth, that produced them ignorant and without the use of reason, they were not presently under that law*; for nobody can be under a law, which is not promulgated to him; and this law being promulgated or *made known by reason only, he that is not come to the use of his reason, cannot be said to be under this law*; and *Adam's children*, being *not presently* as soon as born *under this law of reason, were not presently free*: *for law, in its true notion*, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and *prescribes no further than is for the general good of those under that law: could they be happier without it, the law, as an useless thing, would of itself vanish*; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, the *end of law* is not to abolish or restrain, but to *preserve and enlarge freedom*: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, a liberty for every man to do what he lists: (for who could be free, when every other man's humour might domineer over him?) but *a liberty to dispose, and order* as he lists, *his person, actions, possessions, and his whole property, within the allowance of those laws* under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own." (Locke II, 57, emphasis added)[327]

This passage corroborates my argument about Locke's state of nature being an individual state of awareness. For Locke, no one can be under a law that is not promulgated to him, and

[323] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 12. The law of reason is clear to rational creatures (see p. 176).
[324] See Locke II, 56 on p. 180.
[325] See also Locke II, 4: "state all men are naturally in"; see also p. 73.
[326] See p. 179, p. 183.
[327] Locke II, 57 (emphasis added).

the law of nature can only be promulgated or made known by the use of reason. The law of reason comes to knowledge by the use of reason, "this law being promulgated or made known by reason only, he that is not come to the use of his reason, cannot be said to be under this law."[328] It is thus demonstrated that only via the use of reason can one become "aware" of the law of nature.[329]

Saastamoinen (1998) confirmed this when he emphasises that for Pufendorf, the first created man might have been in an ideal state of nature. However, man fell into the density of matter and became ignorant of the knowledge of the law of reason. This fallen man lost many of the virtues given to him by God, including the knowledge of reason. Pufendorf's text[330] notes that God has imposed natural law on human beings—a state consisting of more than mere physical self-preservation and security as it includes the possession of the rational faculties and the opportunity of using them to increase happiness.[331]

He goes further and says that man was created with capacity to reason in addition to self-preservation. Since the fall, those capacities are rarely used, so one must develop rational capacities as sincere happiness depends on it. Locke's own words confirm this (Locke II, 57).[332] Being born into a state of ignorance implies that the Creator purposed that we should regain these virtues and follow the guidance of reason, becoming responsible for the rest of creation. Another important reference from Locke is already detailed above: "the Natural law is unwritten, and *nowhere to be found but in the minds of men*" (Locke II, 136, emphasis added).[333] This further corroborates my argument that being rational is a state of awareness. Here, Locke affirms that only rational men can apply natural law limits justly,[334] for they understand natural law from a sincere and disinterested point of view. Self-interest blinds men and leads them to misapply the natural law for their own gain. Only rational people can sincerely apply the law of reason for the good of the whole. Locke says it can only be found in the mind of those men who are rational and sincerely act for the good of the whole. The rest of humanity is blinded by passions and self-interests. [335]

The idea that the law of nature refers to a state of awareness can be corroborated further by Locke's essay on human understanding. There too, Locke suggests that the law of reason cannot be "framed in the minds" of those who are not rational: "[They] are always ignorant of them, till they come to the use of reason, . . . because till after they come to the use of reason,

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[328] Locke II, 57.

[329] Additional corroboration can be found in Locke's discussion of the reasonableness of Christianity relating to the origins of mankind:

"[W]hat Adam fell from was the state of perfect obedience, which is called justice . . . and by this fall he lost paradise, wherein was tranquillity and the tree of life; i.e. he lost bliss and immortality . . . . This shows, that the state of paradise was a state of immortality, of life without end; which he lost that very day that he eat: his life began from thence to shorten, and waste, and to have an end; and from thence to his actual death, was but like the time of a prisoner, between the sentence passed, and the execution, which was in view and certain." Locke, (1695), *The Reasonableness of Christianity*, Vol. 6, 'The Reasonabless of Christianity, as delivered in the Scriptures', Para. 2. Here, too, Locke says that, first men enjoyed a peaceful state that had to be abandoned with the fall.

[330] Saastamoinen, (1998), *The Morality of the Fallen Man*, 67. Cited in Zurbuchen, (1998), 425.

[331] Saastamoinen, (1998), *The Morality of the Fallen Man*, 86. (emphasis added); cited in Zurbuchen, (1998), 425.

[332] For an additional analysis of Pufendorf's common good, see p. 113. And the chapter on reason and the government of passions according ot Locke's predecessors.

[333] See analysis on p. 55. See also Locke II, 12, 124 on p. 29 and p. 32.

[334] See the chapter on natural law limits on p. 210.

[335] See Locke II, 12, 124, analysed on p. 29, p. 32, and p. 177.

those general abstract ideas are not framed in the mind . . . . I allow therefore a necessity, that men should come to use of reason before they get the knowledge of those general truths."[336]

For Locke, most men do not follow reason due to their own self-inclinations that blind them to it. Later I will argue that Locke's references indicate that if one day a majority learns to use reason for the good of others, reaching the state of mind their Creator desires via incarnate reason, a peaceful state could become a reality—a state of general awareness shared by the majority (this state is not, then, an idealised impossibility).[337] It is impossible for the law of nature to become a general binding law unless a majority becomes rational, for it will be misapplied by the irrational population.[338] For Locke, being rational is a state of "awareness" of the law of reason. To really become "aware" of the law of reason, the capacity for rational thought given to all men is not sufficient. One must follow reason and put it into practice[339] by acting above certain conflicting desires.[340]

[336] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 9. See also analysis on pp. 178–179, below.
[337] For an analysis of the majority, see p. 82.
[338] Further analysed on pp. 177–178.
[339] To avoid repetition, see also related analysis on the necessity to use reason and how it is clear only to those who use it, p. 176. Regarding the practice of reason being necessary, see p. 179.
[340] See p. 183.

3.3 **Locke's use and meaning of the state of nature**

The state of nature is Locke's basis for and introduction to the *Second Treatise*. It is thus important to understand his vision of the state of nature and the law that governs it—the law of nature, or natural law. Due to the inconsistency of its description and the definition of the state of nature, modern authors suggest that Locke's state of nature is his most misunderstood political philosophy.[341] In general, there is no consistent, leading modern opinion as to Locke's state of nature. However, no one can dismiss it. Simmons says it is "no longer fashionable to simply dismiss Locke's claim about the state of nature as bad history or bad psychology. Nor is it as it once was to accuse Locke of blatant inconsistency or deceptiveness in his description of the social conditions men would endure in the state of nature."[342]

3.3.1 Modern confusion regarding Locke's state of nature

There is a tendency to view Locke's unclear statement regarding the state of nature as his definition of it[343]: "Men living together *according to reason*, without a common superior on earth, with authority to judge between them . . . ." (Locke II, 19, emphasis added).[344] There is little mutual understanding among modern authors as to this statement. The only agreement is to see Locke's definition as the condition of men without a common judge and superior subordination.[345] This creates confusion. Nozick (1974) demonstrates that there are examples within Locke of common judges with authority in the state of nature.[346] Simmons (1989) shares this opinion and adds that nothing within Locke contradicts this option.[347]

Jenkins (1967) states that Locke was purposefully inconsistent with regard to the state of nature to conceal gaps in his arguments.[348] Snyder (1986) argues that Locke has inconsistent views on the state of nature relating to the time before and after the introduction of money.[349] Macpherson's (1962) view is one of the most important as it represents the traditional interpretation of Locke. For Macpherson, Locke's state of nature presents moral and rational men who create property near others who are immoral as well as irrational and who make the state of nature "unsafe and insecure."[350] I can agree somewhat as I too think Locke's vision of the state of nature takes on different forms. But the possibilities depend on the individual choice to be guided by the law of nature, not individual labours, as Macpherson says. Macpherson then argues that Locke's state of nature is inconsistent.[351] He claimed that Locke was inconsistent in saying that men are all equal in the state of nature. He holds that Locke's true intent was that equal men are "rational bourgeois."[352] He suggests that for Locke,

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[341] Dunn, (1984), 46.
[342] Simmons, (1989), 449. See also Aaron, (1955), 273; Gough, (1950), 89; Dunn, (1969), 68–188; Ashcraft, (1968), 62. But see Macpherson, (1980), 14; Strauss, (1953), 224–226; Mabbottll, (1973), 143–146; Jenkins, (1967), 152–153.
[343] See, e.g., Laslett, (1963), Introduction, 111. Ashcraft, (1968) also concentrates solely on establishing a judge. 901. Cox, (1960), 73, along with others who are influenced by Hobbes, also uses the "no common judge" statement as a definition.
[344] Locke II, 19. For further analysis, see p. 81.
[345] See Plamenatz, (1963), Sec. 1, 220–221; Colman, (1983), 177–178; Yolton, (1985), 57; Mabbottl, (1973), 142; Cox, (1982), 21.
[346] See the discussion in Nozick, (1974), entire Ch. 2–6.
[347] Simmons, (1989), 453.
[348] Jenkins, (1967), 152–153.
[349] Snyder, (1986), 745–748.
[350] Macpherson, (1962), 246.
[351] Ibid., 240–246.
[352] Ibid., 3, 221, 246.

appropriation is a rational act, so Locke actually defines rationality as appropriation. "The difference in rationality was a result, not a cause, of that alienation. But the difference in rationality, once established, provided a justification of differential rights."[353] Yet I point to the equality Locke noted in II, 54.[354]

Kendall continues Macpherson's line of thinking: "The [Lockean] law of nature is, in short, a law which commands its subjects to look well to their own interests."[355] Among others, Strauss and Cox support this view and see Locke as a protector of pure self-preservation.[356] Such interpretations of Locke ignore Locke's words regarding the preservation of others.[357]

Ashcraft (1968) summarises modern critics of Locke's state of nature as follows: "According to the critics, therefore, (1) Locke is a poor historian and sociologist; (2) Locke is neither an historian nor a sociologist, though he should be; (3) Locke is an illogical and contradictory theorist; and (4) Locke is a deceptive thinker concealing his true moral beliefs behind the facade of history."[358] Ashcraft then indicates that Locke shows no inconsistency or confusion.[359]

It is not necessarily the lack of a common superior judge among men that is important; Locke notes that when there is no common judge, it is God who decides (Locke II, 21). In this state, men live according to reason, which guides each to obey the natural law requirement of respecting the right of others for the good of the whole.

Ashcraft (1968) describes Locke's state of nature as a state of "uncertain peace" in which men are allowed to follow the law of nature, even if not always.[360] This resembles my understanding that in Locke's state of nature, men can decide whether to follow the law of nature. Colman (1986) supports this, noting that the state of nature is a state of "tension between man's natural sociability and his equally natural desire for personal happiness."[361] I tend to agree with this view because natural law includes limits for the good of the whole that temper the desires of the self.

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[353] Ibid., 246. Macpherson, (1962), in his *Possessive Individualism* goes further than Strauss's "spirit of capitalism" and argues that Locke's desire was to develop a theory of property that could give the juridical basis of the capitalist society. As such, Locke was the first defender of the "dictatorship of the bourgeoisie." Ibid., 3. He provided "a moral foundation for bourgeois appropriation." Ibid., 221. Locke's property doctrine, thus, was a mere justification to the unlimited accumulation of property, representing the main aspect of the capitalist society. He argues it is for this reason that Locke grounded property rights with unequal possession within natural law. "[T]he seventeenth-century bourgeois observer could scarcely fail to see a deep-rooted difference between the rationality of the poor and that of the men of some property. The difference was in fact in their ability or willingness to order their own lives according to the bourgeois moral code. But to the bourgeois observer, this appeared to be a difference in a person's ability to order their lives by moral rules as such." Ibid., 245–246. Macpherson reaches the conclusion that, more than differences of values, there are important differences in rationality between men with property and men without. Macpherson's interpretation of Locke justifies a class-divided society while claiming that, for Locke, only proprietors were rational with rights. Macpherson presumes that Locke's bourgeois society takes for granted the innate rationality of man's unlimited desire for wealth. Macpherson, (1962), 16–19. "[T]he assumption of the rationality of infinite desire may be said both to have produced the capitalist market society and to have been produced by that society." Macpherson, (1962), 19.

[354] See equality in Locke's state of nature, p. 80, footnote 425.

[355] Kendall, (1965), 1167.

[356] Strauss, (1953), 165-66, 202-251; Cox, (1960), 76-80. See also Kendall, (1965), 77. For denial of those arguments, see p. 100, p. 183, and p. 29.

[357] See p. 100.

[358] Ashcraft, (1968), 898. For further conflicting views, see p. 83, p. 82

[359] Ashcraft, (1968), 901–907. See also Colman, (1983), 180–185.

[360] Ashcraft, (1968), 902–903.

[361] Colman, (1983), 185. For a similar opinion, see also Perry, (1978), 61.

Locke's statements on the state of nature are thus not necessary conditions but mere possible descriptions, depending on whether people follow their inner reason. Further, I argue the important part about Sec. 19 is "men living together according to Reason" (Locke II, 19). My observation is similar to Simmons's, who bucks the modern tendency to see Locke's statement as a definition.[362] I share this sentiment for I also think that Locke's notion of "want of common judge with authority" (Locke II, 19) is not a definition. However, I do not agree with Simmona that it is merely a "sufficient condition" for being in the state of nature. I agree that Locke never says that only where there are no common judges does the state of nature exist. There are indeed many examples within Locke where some stay in the state of nature even after the creation of societies.[363] This is corroborated by Simmons: "Locke never claims that it is only where there are no common judges that men are in a state of nature. He never, that is claims that this condition is a necessary one."[364] I further agree that the modern perception of Locke's definition is mistaken in "both obvious and more subtle fashions" in that "men can for Locke be living under effective, highly organized governments and still be in the state of nature—provided only that those governments are illegitimate with respect to them."[365] Locke indeed gives examples for this is living under an arbitrary, tyrannical government.[366]

Locke notes that when there is no longer a judging authority on earth, an appeal to God is to take place:

> "To avoid this state of war (wherein there is no appeal but to heaven, . . . who shall be judge? . . . everyone knows what Jephtha here tells us, that the Lord the Judge shall judge. Where there is no judge on earth, the appeal lies to God in heaven . . . . I myself can only be judge in my own conscience, as I will answer it, at the great day, to the supreme judge of all men." (Locke II, 21)

No common judge in the state of nature is not Locke's definition; there is a common authority—God. I support Simmons's view that for Locke, having no common judge is not a definition and not even necessarily a defect but a mere optional descriptive statement that is purposely vague to suit different interpretations depending on the safety of the state of nature. I go further and argue that a state with no common earthy human judge might even be desired, demonstrating Locke's wish for equality among all humans. I disagree that the insecurity caused by the state without a common judge is that which causes a state of war.[367] Simmons argues that for Locke, it is this that pushes mankind to seek civil government protection (Locke II, 13, 21). But the state of war is not necessity only related to having no common judge. Whether the state of nature is peaceful or unsafe is related to how many follow the law of reason or otherwise use force without right. If a majority follow the law of reason, it may become a peaceful state even without a common judge, as long as a majority do not follow their own reason; when people use force without right, the state is unsafe.[368]

3.3.2 Protection of the unsafe state of nature

Locke is aware that the state of nature entails great inconveniences and dangers (Locke II, 13,

[362] See Simmons, (1989), 466.
[363] Locke II, 9, 14, 15, 145. For citations and analysis, see p. 85.
[364] Simmons, (1989), 451.
[365] Simmons, (1989), 451. Locke II, 17–20, 211.
[366] Locke II, 17–20, 211.
[367] Locke II, 13, 21. Simmons, (1989), 458.
[368] For further explanation, see p. 82.

37, 92, 101, 123, 124, 126, 127). "[I]t is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends: and on the other side, that *ill nature, passion and revenge* will carry them too far in punishing others; and hence nothing but confusion and disorder will follow. . . . I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature" (Locke II, 13, emphasis added).

Hence, Locke teaches that the state of nature is a state in which everyone is a judge. He realizes that this poses a danger due to excessive self-love, priorities with friends, ill nature, passion, and revenge—all of which push people to go too far with punishments. Due to the disadvantages of this possible disorder, Locke concludes that civil government is the "proper remedy" for the inconveniences of this state of nature. Nevertheless, Locke warns that the state of nature lacks unbiased human judges and, as such, authorities subject parties "to the fair determination of the law" (Locke II, 20). As a result, any human enforcement of judgment may be weak and uncertain (Locke II, 13).[369]

Locke explains that history has many examples of a state of nature in which individuals are under a government that does not respect natural law (Locke II, 14, 100–115, 116) and states that virtually all political beginnings are examples of such a state.

> "[H]istory gives us but a very little account of men that lived together in the state of nature. The inconveniences of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated, if they designed to continue together. . . . And those that we have, of the beginning of any polities in the world, excepting that of the Jews, where God himself immediately interposed, and which favours not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it . . . ." (Locke II, 101)

For Locke, the state of nature, even if liberating, is still "very unsafe" as long as humans are governed by their lower nature and not by reason.

> "[T]he enjoyment of the property he has in this state [of nature] is *very unsafe, very unsecure*. This makes him *willing to quit a condition*, which, however free, is *full of fears and continual dangers*: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for *the mutual preservation of their lives, liberties and estates, which I call by the general name, property*. . . . [T]hough in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal . . . ." (Locke II, 123, emphasis added)

Locke also explains that the unsafe state of nature derives from the lack of common consent and authority:

> "[Sec. 124] [I]n the state of nature there are many things wanting. First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. [Sec. 125] Secondly, In the state of nature there wants a known and indifferent judge, with authority to determine all differences according to the established law. [Sec. 126]. "Thirdly, In the state of nature there often wants power

[369] See also Grotius, (1625), *War and Peace*, Bk. II, Ch. 1, Sec. 1, Para. 4.

> to back and support the sentence when right . . . . The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property." (Locke II, 127).

Contrary to the modern authors cited above,[370] who argue that the dangers in this state derive only from having no common judge, I argue that for Locke, the danger exists mainly because the "greater part" of persons do not follow the restrictions of the law of nature, preferring their own passions. In the same paragraph containing the inference of the danger of having no common judge, Locke writes that the unsafe state of nature is also due to the "*ill nature, passion and revenge will*" of men (Locke II, 13, emphasis added). I argue the lack of common authority may cause an unsafe state mainly because the "greater part" of humanity does not observe justice and equity, which results in an unsafe state of nature due to those acting outside of reason. "[T]*he greater part [being] no strict observers of equity and justice*, the enjoyment of the property he has in this state is very unsafe, very unsecure. . . ." (Locke II, 123, emphasis added).

Further if there were no "*corruption and viciousness of degenerate men*, there would be no need of any other; no necessity that men should *separate from this great and natural community*, and by positive agreements combine into smaller and divided associations" (Locke II, 128, emphasis added). Thus, if people follow natural law limits, it would be possible to live within one "great" and "natural community," even without a common judge. From this I infer that the greatest insecurity derives from the people who do not follow natural law limits—not the lack of a common judge.

Locke also says that men's minds become corrupt over time and seek possession above usefulness: "[I]n the beginning, before the desire of having more than man needed had altered the intrinsic value of things, which depends only on their usefulness to the life of man" (Locke II, 37). Similarly, Grotius viewed the state of nature of mutual affection as possible only as long as people were content to live "on the fruits which the earth brought forth of its own accord, without toil" or, if they had "lived on terms of mutual affection . . . such as rarely appears."[371] Grotius explains that mutual affection could not survive due to "the remoteness of the places to which men had made their way, and then by the *lack of justice and kindness*; in consequence of such a lack the proper *fairness in making division was not observed, either in respect to labour or in the consumption of the fruits*."[372] It is thus mainly due to individuals who do not respect the law of nature, "who lack justice" (which Grotius defines as not interfering with others' *suum*, or following reason),[373] or who do not follow reason (thus not preserving the ideal natural state of mutual affection).

This demonstrates Locke's awareness of the inconveniences in his state of nature. However, contrary to most modern authors who relate this insecurity to the lack of common judge,[374] for Locke, those inconveniences mainly arise as long as a "greater part" of people do not follow reason. As analysed below, for Locke, a simple majority of people following reason for the preservation of the whole could bring a peaceful state of nature even without a common

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[370] E.g., Simmons, (1989), 458; Plamenatz, (1963), Sec. 1, 220–221; Colman, (1983), 177–178; Yolton, (1985), 57; Mabbottl, (1973), 142; Cox, (1982), 21.
[371] Grotius, (1625), *War and Peace*, Bk. I, Ch..2, Sec.1., Para. 5.
[372] Grotius, (1625), *War and Peace* , Bk. I, Ch..2, Sec.1., Para. 5. (emphasis added); ibid., Ch. 2., Sec.1, Para. 4.
[373] See explanation of *suum* on p. 121.
[374] See footnote 370.

judge.[375]

According to Simmons, any valid definition of Locke's state of nature must refer to the "full agreement that alone creates civil society and removes men from their natural condition. Reference only to a part of that agreement, as having no common judge with authority, will not suffice."[376] Simmons then proposes his own definition of Locke's state of nature:

> "Each person is born into the state of nature (simpliciter), and, barring a universal community of man, each person stays in the state of nature with respect to at least some (and possibly all) others. Those Incapable of consent (voluntary agreement) and those who choose never to consent remain in the state of nature (simpliciter). Those whose communities are dissolved (for example, by foreign conquest) and those who are abused by otherwise legitimate governments are returned to the state of nature (simpliciler). Persons who enter civil society (including princes) leave the state of nature with respect to fellow citizens, but remain in it with respect to all alien nations and with respect to all noncitizens (that is, those still in the state of nature) (simpliciler). All of these consequences of the definition I have offered seem to square precisely with Locke's claims about the state of nature."[377]

This definition includes aliens, children, and the mentally ill as unable to voluntarily agree to join a political community. Simmons states, "Obviously, my definition has a great deal in common with those we considered earlier and rejected, but it squares with claims made by Locke for which they cannot account."[378]I propose that the best way to interpret Locke's state of nature is to see it as a desired state of awareness to be achieved individually by knowing and following reason above one's own passions. This explains why, for Locke, any individual can reach this state: "[I]t is plain the world never was, nor ever will be, without numbers of men in that state" (Locke II, 14). "So that under this consideration, *the whole community is one body in the state of nature, in respect of all other states or persons out of its community*" (Locke II, 145, emphasis added).[379] My interpretation is consistent with Locke's definition of the law of nature as a law existing only in the minds of men (Locke II, 136).[380]My own definition is similar to Simmons's[381] yet differs mainly with regard to this state being a state of awareness of the law of reason leading to rational thinking.[382] This would cover all situations mentioned by Locke, including Simmons's "later instantiations" of that state.[383] I provide this definition below after analysing the main conflicting views and statements on Locke's state of nature.[384]

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[375] See the possible peaceful state by majority decision, p. 82.
[376] Simmons, (1989), 453.
[377] Simmons, (1989), 455. In other words, he suggests that A is in the state of nature with respect to B if and only if A has not voluntarily agreed to join (or is no longer a member of) a legitimate political community of which B is a member. And then, as a special case, falling under this account, we can say that A is in the state of nature (simpliciter) if and only if A has not voluntarily agreed to join (or is no longer a member of) any legitimate political community. See further on Simmon's definition p.69 and p. 83-87.
[378] Simmons, (1989), 454. See further on Simmon's definition p.69 and p. 83-87.
[379] See additional references and analysis on p.85.
[380] See p. 55 and "state of awareness," p. 64.
[381] See p. 69 and p. 83.
[382] See p. 64 and heading; Natural law becomes clear to those who use the capacity of reason, p. 176.
[383] See discussion of "later instantiations," p. 84.
[384] To avoid repetition see my entire definition p. 97-98. For further conflicting views, see p. 83, p. 82.

3.3.3 Locke's state of nature as a possible state of peace

3.3.3.1 A moral state of nature

The usual interpretation of the state of nature is a state before the creation of society that is generally unsafe due to mankind's "base" concern for self-preservation and convenience and the lack of a common judge.[385] But Locke presents the real possibility of another state of nature—a safe and peaceful state with mutual assistance and preservation under the guidance of reason, natural law limits, and liberating rights for all.

How is this consistent with Locke's insistence that the state of nature is "very unsafe"? I argue that the state of insecurity is not only due to the lack of a common judge but to the "greater part" of persons not following reason and acting out of self-interest alone, which hides the limits of the law of nature that help preserve the whole (Locke II, 13, 123,128).[386] In general, I argue the inverse: If a majority of people start to use reason for guidance towards the common good, the unsafe state could become an actual state of peace. However, I have sufficient direct references from Locke's texts indicating his moral intentions from his state of nature.

3.3.3.1.1 A moral state of absolute liberty and obligation

Locke often repeats that his state of nature is one with liberties and corresponding duties.

> "To understand political power right, and derive it from its original, we must consider, what *state all men are naturally in*, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, *within the bounds of the law of nature*, without asking leave, or depending upon the will of any other man." (Locke, II, Sec. 4, emphasis added)[387]

All men have the capacity to be in a state of perfect freedom and order their actions as they think fit if harmless to others. This natural state thus allows each individual the absolute right to order actions or possessions without the interference of another—without being dependent on another's will and without asking for leave.

The most important part of this statement is that a person's actions must be within the bounds of the law of nature. All those liberties are guaranteed if the natural law limit of respect for the rights of others is guaranteed, or if no one is harmed. Natural law limits[388] guarantee that everyone can enjoy the same rights or that no one is harmed. Limits safeguard the preservation of the whole, the common good.

For Locke, each individual has the absolute right to be free to order his or her acts as he or she pleases, if (as part of this structure) he or she respects the same rights of others (natural law limits). Locke would guarantee the preservation of the self, conditioned on the preservation of

[385] See section above on the unsafe state of nature, p. 69. For the modern definition as a lack of common judge, see p. 67.
[386] See references and conclusion on p. 71.
[387] Locke, II, 4. Also analysed on p. 212.
[388] Citation on p. 212. Analysed in detail in the position of the preservation of others in Locke's texts, p. 100 and following.

others.[389]

We learn thus that one is not allowed to be free to act only for self-preservation. Preservation of others is a corresponding obligation. In Locke's words,

> "For in the state of nature, to omit the liberty he has of innocent delights, a man has two powers. The first is to do whatsoever he thinks fit for the preservation of himself, and others *within the permission of the law of nature*: by which law, common to them all, he and all the rest of mankind are *one community, make up one society, distinct from all other creatures*." (Locke II, 128, emphasis added)[390]

This and other examples[391] negate all modern interpretations of Locke pointing only to pure self-preservation, such as Macpherson, Strauss (1953), and their followers. For Macpherson (1962), Locke's text is a *"*defense of expanding property rather than the rights of the individual against the state".[392] Against this, Locke says that mankind creates one community or society distinct from the rest of creation and preserves not only each individual but also others of the same kind, sharing the same nature. In general, the right under natural law is to freely pursue harmless activities, if under the limits of the law of nature, the purpose of which is to guarantee the preservation of the same rights for all mankind (Locke, II, 4).[393]

For Locke, the aim of the law of nature is the peace and preservation of all. "And that all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and *preservation of all mankind . . . .*" (Locke II, 7, emphasis added; see also Locke II, 134, 182).[394] Locke repeats the importance of the preservation of others:

> "The first power, viz. of *doing whatsoever he thought for the preservation of himself, and the rest of mankind*, he gives up to be regulated by laws made by the society, so far forth as the *preservation of himself, and the rest of that society* shall require; which laws of the society in many things confine the liberty he had by the law of nature." (Locke II, 129, emphasis added).

Here, too, Locke emphasises that it is not only about the preservation of the self but also the preservation of the "rest of mankind" or the "rest of that society." For Locke, it is important that the law of nature is common to all men by virtue of their being human so that all men create one community (unlike other living organisms): "[A]ll the rest of mankind are *one community, make up one society, distinct from all other creatures*" (Locke II, 128, emphasis added)

Locke repeats that the absolute liberties are to be free from any human subordination while only having the law of nature to rule. All subordination of governments is established via

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[389] Locke's state of nature is governed and restricted "within the bounds of the law of nature" Locke II, 4.
[390] Locke II, 128. See further analysis p. 96.
[391] See chapter on preservation of others, p.99.
[392] Macpherson, (1962), 257, 261. Strauss, (1953) joins and adds that for Locke, the first aim of the government is the protection of the *"*different and unequal faculties of acquiring property*"* Strauss, (1953), 245, 247. See also Lord, (2003), 70-72; Fukuyama, (1992), 158, 203. Hampsher-Monk, (1992), 104 and; Gwyn, (1965), 78. For a detailed discussion, see Mansfield, (1993), Ch. 24, 148, 185, 189, 191, 200, 201-203, 205-206, 209; see also Ch. 24, 186-192, 211, 220, 237, 258-259, 261, 288.
[392] See Hobbes, (1651-1668), Ch. 13, 8-9. See also Ch. 13,13. Natural law binds only "in foro intermo" the state of war (Ch. 13, 35).
[393] See analysis on p. 212.
[394] Citation on p. 62.

consent.

> "THE natural liberty of man is to be *free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule*. The liberty of man, in society, is to be under no other legislative power, but that established, by consent." (Locke II, 22, emphasis added)

Thus, Locke explains that the greatest liberty is to have a common rule of natural law for all men. No other human law is to restrain without consent. This is for better security because natural liberty requires a law of nature without any other subordination.

> "[B]ut freedom of men under government is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature." (Locke II, 22)

All men are to live under the duties of the law of nature and not under one another's subordination. For support, Locke cites Hooker's proposition that any human subordination is a cause of misery; each is to understand his rights and obligations that follow from it under the state of nature. "They saw, that to live by one man's will, become the cause of all men's misery. This constrained them to come unto laws wherein all men might see their duty before hand, and know the penalties of transgressing them" (Locke II, 111)[395]

3.3.3.1.1.1 Golden age—Locke and Grotius

Demonstrating that his state of nature is moral, Locke describes the early stage in the development of political society as a "golden age" of equality, "innocence," and "virtue."

> "But though the *golden age (before vain ambition, and amor sceleratus habendi, evil concupiscence, had corrupted men's minds into a mistake of true power and honour) had more virtue* and consequently better governors, as well as less vicious subjects, and there was then no stretching prerogative on the one side, to oppress the people; nor consequently on the other, any dispute about privilege." (Locke II, 111)[396]

Thus, Locke had a favourable moral opinion of the natural state before humanity was "corrupted" with evil tendencies toward power and honour.[397] This is similar to Grotius, who also uses the term *golden age* to describe the "earliest epoch of man's history."[398]

As a modern interpretation confirming Grotius's view, Darwall (2006) adds that for Grotius, some animals can live together and demonstrate the capacity to act out of something like affection or concern for at least some others of their kind. However, Darwall finds that for Grotius,

> "What is distinctive about human beings in this regard is their capacity for and

[395] Locke citing Hooker, Eccl. P01.1. i. sect. 10.
[396] Emphasis added. See also Myers, (1995), 639–649.
[397] Honour, for Locke, is a vicious tendency that corrupts a human's mind: "evil concupiscence, had corrupted men's minds into a mistake of true power and *honour*" (Locke II, 111).
[398] See Grotius, (1868 ed), *De iure*, Bk. 12, Ch. 100; Grotius, (1609), *Mare Liberum*, Ch. 5, Para. 22. To avoid repetition, see Grotius's references to the obligation to love others on p. 110.

> disposition towards a particular kind of social order, namely, one mediated by the common acceptance of 'General Principles.' What is distinctive of human beings is the capacity for and the drive toward a distinctive kind of society, namely, 'A Society of reasonable Creatures".[399]

Murphy (1982) confirms this:

> "What distinguishes man is a desire for social life. He has a need to live in a way that is "*peaceful and organized according to the measure of his intelligence with those of his own kind." Endowed with a capacity for goodness and altruism, he can understand the essential moral principles derived from a rational social nature. This capacity of human nature makes the precepts of right reason the ultimate source of law*." (emphasis added)[400]

To Haakonssen (1985), "in *contrast to Hobbes*, Grotius operated with the idea that nature had made possible an ideal *order in the moral world*, and that the function of law was to maintain rather than create it."[401] Locke also calls for a society of reasonable men to create a peaceful state of nature for the preservation of the whole—a society that voluntarily accepts obligations and is aware of their moral nature. This interpretation of Grotius thus confirms my argument regarding Locke's peaceful state of nature.

Consistent with Grotius and contrary to Hobbes, Locke states that the state of nature comprises full obligations and rights.

> "But though this be a state of liberty, yet it is not a state of license: though man in that state have an *uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession,* but where some nobler use than its bare preservation calls for it. *The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law* [that] *teaches all mankind, who will but consult it,* that being all equal and independent, *no one ought to harm another in his life, health, liberty, or possessions*: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's. *Every one as he is bound to preserve himself, and not to quit his station willfully; so by the like reason when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind,* and may not unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb or goods of another." (Locke II, 6, emphasis added)

For Locke, each is "born to" a state that includes duties and rights, including *the preservation of the self and, in the measure of possibility, the preservation of others*—the rest of mankind" (Locke II, 6, emphasis added). This is the negative inference deriving from reason—of not

[399] Dawall, (2006), 16-17.
[400] Murphy, (1982), 483, emphasis added.
[401] Haakonssen, (1985), 241, emphasis added.

harming others' life, liberty, health, limbs, or goods (Locke II, 6).[402]

The above-mentioned references from Locke are recognized by modern interpretation. As seen below within Locke's precepts, natural law calls for certain moral obligations. Based on Locke II, 6, I share Simmons's view, who summarises these obligations as follows: (1) preservation of life; (2) if possible and not in competition, the preservation of the life of others; (3) no harm to others (no killing others or damaging others' life, health, liberty, or possessions); and (4) no arbitrary killing of animals in possession unless for a nobler cause than self-preservation.[403]

Locke's state of nature demonstrates the moral choice to look above the mere preservation of self and be conditioned by the preservation of the whole. Locke's treatment of natural law within the state of nature points to a state of liberating freedom with corresponding duties in relation to others so that no one is harmed. It instructs the use and guidance of reason, which is the law of that state.

I share the view of Ashcraft (1968), who believes that an ideal state of nature for Locke would produce more highly evolved men in terms of morality. He claims that Locke demonstrates that it is possible for men to become "moral beings" and think for the good of the whole. "Locke's objective is limited: to prove that it is possible for men to live in obedience to natural law, and, on that basis, to show that they are moral beings."[404]

Locke often is compared to Hobbes's state of war. The traditional school of interpretation argues that Locke's state of nature is Hobbes's state of war.[405] Strauss (1953) sees Locke's state of nature as a state of war: "Locke is either a superficial, inconsistent thinker or a concealed Hobbesian."[406] Cox (1960) says that Locke is really Hobbes in disguise.[407] He supports this argument by saying that for Locke, any "dissolution of government will *always* bring back again the state of war."[408] But Locke provides certain conditions wherein the state of nature could become a state of war, especially when the government uses its authority to produce violence instead of peace and security. But Locke never uses the word "always": "[F]or when men, by entering into society and civil-government, have excluded force, and introduced laws for the preservation of property, peace, and unity amongst themselves, *those who set up force again in opposition to the laws, do rebellare, that is, bring back again the state of war*, and are properly rebels" (Locke II, 226, emphasis added).

I agree with Ashcraft (1968), who answers that "Locke makes no such statement. What he says is that those who set up force again in opposition to the laws bring back again the state of war."[409] Ashcraft explains that this is a specific condition; the word 'always' was inserted by Cox: "Locke means to state this as a special condition attached to the dissolution of government, 'always' is the key word missing from Locke's argument, a word conveniently supplied by Cox."[410]

Like many others, Kilcullen (1983) also compares Locke to Hobbes and concludes that

[402] See analysis of no harm to others on p. 123.
[403] Simmons, (1992), 338–341. See additional details and references on p. 58.
[404] Ashcraft, (1968), 907. See also Ashcraft, (1986), 234; p. 87, below; Dunn's definition of Locke's state of nature, p. 83, below.
[405] Strauss, (1953), 224–232, 203–214;Cox, (1960), 224; Bluhm, (1965), 303; Goldwin, (1987), 435.
[406] Strauss, (1953), 224–232, 203–214. See Ashcraft, (1968), 898.
[407] Cox, (1960), 224; Bluhm, (1965), 303; Goldwin, (1987), 435. See Ashcraft, (1968), 901.
[408] Cox, (1960), 79, emphasis added; cited in Ashcraft, (1968), 902.
[409] Ashcraft, (1968), 902, citing Locke II, 226.
[410] Ashcraft, (1968), 902.

Locke's state of nature is safer than Hobbes's in that each person is to comply with the limits of reason, regardless of whether others comply.

> "But according to Locke, even in the state of nature concern for the preservation of mankind may require compliance with restrictions even when others do not comply, despite the risks [while] compliance includes accepting restrictions natural law imposes which limit the right to take precautions . . . ; These differences mean that on Locke's theory the state of nature should be safer: each person should comply with and enforce the law of nature even if others do not, taking only reasonable precautions. This because in Locke's state of nature; "at least the state of nature is less likely to be a state of war than if self-preservation were the sole or over-riding imperative."[411]

Locke's state of nature is further a "relational concept" that is "more individualistic" than Hobbes's.[412] For Locke, some stay in the state of nature "with respect to certain people and out of it with respect to others (at the same time)."[413] For example, Locke considers a visitor to legitimate alien states as in the same state of nature with the citizens of the visited state, but not with regard to his own state (Locke II, 9).[414] For Locke, governments can only have power over an alien within the state of nature (Locke II, 9).

Hobbes describes the state of nature as a state of "war" of all against all: a "solitary, poor, nasty, brutish, and short" state where "of every man against every man" and "the notions of right and wrong, justice and injustice, have there no place."[415] Nothing is mentioned as to the possibility of peaceful preservation and mutual affection in Locke's state of nature (Locke II, 19).[416]

The definitions of both differ in various ways, mainly in that Locke presents a somehow more "moral" picture of the state of nature, including individuals having full-blown moral rights and obligations.[417] For Simmons, it is clear that Locke's definition "leans toward the moral characterization, making prominent use of distinctively moral notions."[418]

> "Locke's state of nature . . . is populated by persons with *full-blown moral rights*, Locke's state of nature can fit with the voluntarist conceptions of authorization and transfer of rights to produce a coherent voluntarist account of the nature of the citizen-state relationship. Its role in this account explains much of the point of Locke's concept of the state of nature. Insofar as we find this voluntarist program compelling, we have reason to take seriously Locke's state of nature as a central concept in political philosophy." (emphasis added)[419]

Simmons then recognizes that "what is clearly needed in any adequate definition of Locke's

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[411] Kilcullen, (1983), 328.
[412] Simmons, (1989), 451. See also footnote 13.
[413] Locke II, 14, 9, 15, 145. See p. 85.
[414] This is in contrast to Hobbes, (1651-1668), who never mentioned different treatments. See Hobbes, (1651-1668), Ch. 21, 11–21. For Hobbes the government remains in the state of nature even in relation to those who are out of it. See Ch. 28, 2. For more details, see Kavka, (1986), 88–89.
[415] See Hobbes (1651-1668), Ch. 13, 8-9. See also Ch. 13, 13. Natural law binds only "in foro intermo" the state of war (Ch. 13, 35).
[416] See Locke II, 19, p. 81.
[417] Simmons, (1989), 450.
[418] Simmons, (1989), 455, 465.
[419] Simmons, (1989), 465.

state of nature is some element that *captures the distinctive moral component of that state*."[420] He thus says Locke has something moral about his state of nature that the recognized definition of a condition of men without a common judge and superior subordination[421] is not able to demonstrate. Simmons's conclusions corroborate the moral picture of Locke's state of nature.

In Locke's state of nature, men have the moral choice to decide whether to follow natural law limits and reason. If they do not, they expose themselves to a state of war without the protection of the rights and obligations within it. The best way, Locke says, is to follow reason, with its moral limits: "within the bounds of the law of nature" (Locke II, 4) or "within the permission of the law of nature" (Locke II, 128). Right reason sees "a law of nature to govern it, which obliges every one: and reason, which is that law" (Locke, II, 6). By respecting the obligation inferred by reason, we acquire the right to have the same protected rights as we respect for others.

This possible moral state might not have been possible during Locke's time or even today; it is a beautiful, peaceful, idealistic possibility that humanity may reach one day, as the moral condition desired by God for men. It is possible if a majority of people start using reason and follow that law of reason instead of pursuing self-interest.[422]

3.3.3.1.2 Natural state of equality

As a further demonstration of the morality within Locke's state of nature, Locke proposes a basic concept of equality and no subordination among all members of the same species.

> "A state also of *equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than *that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection* . . . ." (Locke II, 4, emphasis added)

Locke further states that equality entails a duty to love others of your kind: "[I]t is no less their duty, to love others than themselves" (Locke II, 5). Everything equal must have the same measurement: "[T]hings which are equal, must needs all have one measure" (Locke II, 5). Thus, for Locke, equality of rank in a species obliges people to treat others as they would wish to be treated. "[H]ow should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature?" (Locke II, 5).[423] Each is to expect the same degree of affection he or she gives to others. "[S]o that if I do harm, I must look to suffer, there being no reason that others should show greater measure of love to me than they have by me shewed unto them" (Locke II, 5).

Locke looks to Hooker to support this idea and claims that equality is the foundation of mutual love.

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[420] Simmons, (1989), 451, emphasis added.
[421] See Plamenatz, (1963), Sec. 1, 220–221; Colman, (1983), 177–178; Yolton, (1985), 57; Mabbottl, (1973), 142; Cox, (1982), 21.
[422] See analysis of the majority on p. 73.
[423] Locke II, 5. Locke demonstrates that the desire to be appreciated and loved by others of the same species implies the duty to treat others with the same degree of affection. "[M]y desire therefore to be loved of my equals in nature as much as possible may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves" Locke II, 5.

> "This equality of men by nature, the judicious Hooker looks upon as so evident in itself, and beyond all question, that he makes it the *foundation of that obligation to mutual love amongst men*, on which he builds the duties they owe one another, and from whence he derives the great maxims of justice and charity." (Locke II, 5, emphasis added)[424]

To Locke, equality is specific; nature favours some individuals over others. He explains that there is no real equality from birth as to the natural conditions for development. Rather, Locke emphasises that true equality is in the natural freedom of each person to pursue his or her harmless goals of self-preservation "without being subjected to the will or authority of any other man" (Locke II, 54). It is the equal right to order the self and engage in harmless actions without interference. This interference is punishable, for it harms the conditions and possibilities of self-preservation. Damage is to be repaired.

> "*Though I have said above, Chap. II. That all men by nature are equal, I cannot be supposed to understand all sorts of equality*: age or virtue may give men a just precedency: excellency of parts and merit may place others above the common level: *birth may subject some, and alliance or benefits others*, to pay an observance to those to whom nature, gratitude, or other respects, may have made it due: and yet all this consists with the equality, which all men are in, in respect of jurisdiction or dominion one over another; which was *the equality I there spoke of, as proper to the business in hand, being that equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man*." (Locke II 54)[425]

Similarly, Grotius suggests that if only all parts of the "human body" support each other in "mutual forbearance," not engaging in harm, then there would be a better preservation of the whole (and the individual).[426] For Pufendorf too, the "*summa imbecillitas atque naturalis indigentia*" obliges men to sincerely admit the common good to be his own good.[427] For Locke, all creatures are of the same rank by virtue of their equal measure and capacity. Equality means that no injury can be done to others, for it is evident that creatures of the same species and rank, born to the same conditions of nature, should be equal in measurement and in treatment.

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[424] See also Locke II, Ch. 2, 3.

[425] Emphasis added. This wording supports my arguments and counters current utilitarian arguments that men cannot be considered equal in view of their physical and intellectual differences. Locke specifically explains that humans all are naturally different. The equality Locke refers to is being of the same rank, with the same abilities and interests, equal in their right to possess from the common and pursue harmless goals without any interference, bound by natural law limitations for the preservation of others. Each individual has the right to be free of interference of others. See more arguments against the utilitarian movement on p. 209 and footnote 135. See also on the need for the revival of natural law on p. 26 and in the introduction, p.12.

[426] "[A]ll the members of the human body agree among themselves, because the preservation of each conduces to the welfare of the whole, so men should forbear from mutual injuries, as they were born for society, which cannot subsist unless all the parts of it are defended by mutual forbearance and good will." Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 3. See also ibid., Bk. I, Ch. 1, Sec. 10.

[427] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 2, Cap. 11 and Lib. 3, Cap. 14. See also Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 15: "Cuilibet homini, quantum in se, colendam et conservandam esse pacificam adversos alios socialitatem, indoli et scopo generis humani in universum congruentem . . . ." "Where reason rather than passion controls the actions of princes, a universal measure of judgment is operative. It reveals the general rules of living with others. *Man is, admittedly, divided. But he knows that submission to his immediate anxious desires leads to his destruction and the ruin of those under his care*. The long-range view, encouraged by reflective reason, brings peace and security as well as personal respect." Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 15 (emphasis added). For Pufendorf, if men start to follow reason and not passions, it would be easier to measure man in understanding when seemingly divided. It is the only moral, long-term way to achieve security for all men. See also p. 186, below.

3.3.3.1.3 Locke's state of nature as a possible state of peace rather than a state of war

For Locke, the state of nature is "far distant" from the state of war, which he defines as a state of "enmity, malice, violence and mutual destruction." According to Locke, the state of nature is similar to "a state of peace, good will, mutual assistance and preservation."

> "And here we have the plain difference between the state of nature and the state of war, which however some men have confounded, are as far distant, as a state of peace, *good will, mutual assistance and preservation*, and a state of enmity, malice, violence and mutual destruction, are one from another. *Men living together according to reason*...." (Locke II, 19, emphasis added)

Locke further explains that a *state of war* is the *use of force without a right* on another person: "But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war" (Locke II, 19, emphasis added).[428]

Locke is aware of the confusion regarding the state of nature and the state of war, both being without a common judge among men. However, Locke makes it clear that his state of nature is not malicious but moral, reminding each individual of his or her natural eternally protected rights and obligations. Locke's peaceful state of nature is guided by reason. Natural law limits are respected, and men live "together according to reason". In those conditions, the state of nature resembles "a state of peace, good will, mutual assistance and preservation" (Locke II, 19). Further, for Locke, the state of war can derive from the state of nature if men do not live under the rules of reason that can be found within each and use "force without right, upon a man's person" (Locke II, 19). Here, we learn that force without right creates a state of war.[429]

Some modern authors are confused[430] by Locke's contrasting descriptions of the possibilities of the state of nature as a possible state of war and of peace. But for Locke, the aim of the law of nature is clearly the peace and preservation of the whole of mankind (Locke II, 7). This purpose itself points to a rather moral picture of Locke's state of nature. Locke says, "And that all men may be *restrained from invading others rights, and from doing hurt to one another*, and the *law of nature be observed*, which *willeth the peace and preservation of all mankind*" (Locke II, 7, emphasis added).[431] He even calls the state of nature a "golden age" of equality, "innocence," and "virtue" (Locke II, 111, emphasis added).[432] This again demonstrates Locke's favourably moral opinion of the natural state before humans were "corrupted" by the evil tendencies of power and honour.

In general, all references demonstrating that Locke's state of nature is bounded by reason indicate that the state of nature is a state of natural rights with the same obligations to others

[428] To avoid repetition, see p. 67.
[429] For additional analysis of this section, see p. 67. See also Locke II, 21 on p. 69.
[430] e.g., Macpherson, (1962), 240–246; Jenkins, (1967), 152–153; Snyder, (1986), 745–748; Colman, (1983), 177-178, 180–185; Nozick, (1974), entire Ch. 2–6, and, 174-176; Simmons, (1989), 453; Plamenatz, (1963), Sec. 1, 220–221; Yolton, (1985), 57; Mabbottl, (1973), 142; Cox, (1982), 21. See analysis on p. 67.
[431] See also Locke II, 134, 182 citations under p. 62 and further analysis under p. 73 and following.
[432] See full citation and analysis of this and its similarity to Grotius on p. 75.

(e.g., Locke II, 4, 6, 118, 128).[433] This demonstrates that Locke's desired state of nature is one guided by reason—a state of peaceful and mutual understanding and preservation.

The above references suggest that Locke believes in a peaceful state of nature that is quite different from the state of war. This state can be experienced in all times by each individual who follows his or her reason and natural law limits for the good of the whole. In following reason, men become aware of its limits while also becoming fully rational. For Locke, a simple majority of men following reason could create this peaceful state of nature, the designated place for mankind.

3.3.3.1.4 Modern authors support of a future peaceful state

As mentioned earlier, there is inconsistency in Locke's definitions of the state of nature.[434] As demonstrated below, for some modern interpreters, Locke's state of nature can be a real state or a mental construct. It is for this reason that some claim that Locke only discussed the probability of the state of nature.[435]

Strauss (1953) and his followers believe that Locke's state of nature is a factual description of an actual early society that resembled a state of war.[436] By contrast, Dunn (1969) sees Locke's state of nature theologically as the desired condition under which God placed men on earth.[437] "The state of nature, that state that all men are naturally in, is not an asocial condition but an historical condition. It is that state in which men are set by God. *The state if nature is a topic for the theological reflection.*"[438] Dunn further writes, "In itself it is simply an axiom of theology. It sets human beings in the theology of divine purposes."[439]

He continues, "No society in history has yet met the critical standard which this feat set up, through many more sophisticated and secular figures than Locke have pretended bravely that their society did or does so."[440] I agree with Dunn that no society in history fully exercised the moral liberties and obligations described in Locke's peaceful state of nature. This is consistent with my argument that no society has had a majority of rational persons following reason, but I hold that such a state is an at least unlikely possibility.

Ashcraft (1968) says the double description of Locke's state of nature presents a logical contradiction: The state of nature cannot be an historical factual state because rationality, in its moral sense of natural law limitations, was unlikely in historical times that exhibited a rude environment whereby each had to ensure his or her own survival.

> "*[I]n supplying two different descriptions of the state of nature, Locke is censured for involving himself in a logical contradiction* which renders useless the key to understanding the framework of his political thought. Alternatively, supposing the Lockean state of nature to be a description of the historical existence of men, *it is difficult to see how their actions in that state can be meaningfully related to the Law of Nature, as Locke contends, since a rational understanding of the precepts of natural*

[433] See more direct references to Locke's moral state of nature on p. 73; his references to equality, p. 79 and; the implied obligations, p. 58.
[434] See p. 67.
[435] See modern debate with references in Ashcraft, (1968), 62, 898–915.
[436] Strauss, (1953), 224–232, 203–214, Cox, (1960), 224; Bluhm, (1965), 303; Goldwin, (1987), 435
[437] For discussion and conflicting views, see p. 83.
[438] Dunn, (1984), 47, emphasis added. See also Dunn, (1969), 97.
[439] Dunn, (1969), 103.
[440] Dunn, (1969), 261.

> *law is not likely to be the possession of individuals living in a rude and primitive state*."[441]

Aaron (1955) adds that if Locke's state of nature is an "historical account of the origins of government, it is bad history. Most political societies did not begin as Locke suggests. As one writer puts it, 'history and sociology lend but little support to this theory of free men entering into a compact and so creating a political group.'"[442]

3.3.3.1.4.1 Simmons versus Dunn

Dunn (1984) argues that Locke's state of nature is a theological condition "in which God himself places all men in the World."[443] The purpose of nature is to show mankind their rights and duties, as given by God. "The most fundamental right and duty is to judge how God . . . requires them to live in the world."[444] For Dunn, Locke's state of nature is "[t]he condition in which God himself places all men in the world, prior to the lives which they live and the societies which are fashioned by the living of those lives." Moreover, "[w]hat it is designed to show is not what men are like but rather what rights and duties they have as the creatures of God."[445] This definition is consistent with my argument that Locke's state of nature could become the Creator's desired state. However, this is not just a theological-historical situation; it is a state of awareness of the law of reason achieved in the past and present.

I argue that Locke's own words speak against any inconsistency as to the reality of the state of nature[446]:

> "It is often asked as a *mighty objection, where are, or ever were there any men in such a state of nature?* To which it may suffice as an answer at present, that since all princes and rulers of independent governments all through the world, are in a state of nature, *it is plain the world never was, nor ever will be, without numbers of men in that state*." (Locke II, 14, emphasis added)

Locke raises this "mighty" objection to his own state of nature, asking whether it is real. He then answers that there always will be people in the state of nature. He gives an example of princes and rulers of independent governments within that state. I have not came across this interpretation, but I assert that it is impossible to interpret Locke to mean that only princes and rulers of independent governments could live the state of nature.[447] Locke gives clear examples of people who individually are in this state of nature. Princes and independent rulers are in full possession of their liberties and obligations to their people. [448]

Locke continues with other historical examples of men being in the state of nature. "[B]y Garcilasso de la Vega, in his history of Peru; or between a Swiss and an Indian, in the woods of America, are binding to them, *though they are perfectly in a state of nature, in reference to one another*" (Locke II, 14, emphasis added). For Locke, such men (not princes and rulers of

[441] Ashcraft, (1968), 898 (emphasis added).
[442] Aaron, (1955), 273. See also Ashcraft, (1968), 898. I add this is agreed by Locke's examples of history (Locke, II, 14, 100-115,116). See p. 170.
[443] Dunn, (1984), 47.
[444] Dunn, (1984), 47.
[445] Dunn, (1984), 47. See also Dunn, (1969), 97, 103.
[446] See also p. 67. For further conflicting views, see p. 82.
[447] See also Locke II, 184.
[448] See my interpretation of Locke II, 145 and Locke II, 4, 128, 14, 9 below as counterarguments demonstrating that all men can be in the state of nature.

states) were in the state of nature and voluntarily formed a commonwealth.[449]

The important part of Locke's statement is that "men may make one with another, and yet still be in the state of nature" (Locke II, 14). The state of nature, thus, is not an historical state of the past but an individual and on-going state. It is not connected to the creation of government or societies. Locke insists that men could consent to a societal relationship while remaining in the state of nature. As such, the state of nature does not end with the creation of society. It has always existed and still exists within society; "it is plain the world never was, nor ever will be, without numbers of men in that state" (Locke II, 14).

Seemingly contrary to Dunn, Simmons (1989) argues that Locke's different descriptions of the state of nature counsel against the "temptation" of viewing Locke's state of nature as the condition in which men are expected to live on earth.[450] This is mainly because a state of war is a possibility.[451] "The point here is only that Locke's concept of the state of nature is compatible with an extremely wide range of possible social circumstances."[452]

> "It is tempting to say that the moral condition In question is the condition into which God placed man (or the condition into which a mature person rises when he receives his moral birthright) or that the relevant condition is the moral condition of man prior to its modification by his complex social and political interactions. There is no denying that Locke sometimes speaks in these ways, *but as we have seen, none of these ideas can be quite right, for Locke's state of nature has no precise moral characterization either*. The moral condition the state of nature describes is simply the moral condition of the noncitizen in—the condition of not being a member (with others) of a legitimate civil society."[453]

Simmons is not necessarily against Dunn's definition in general. He only criticizes the notion that an early state cannot include what Locke terms "the world never was, nor ever will be, without numbers of men in that state" while adding that "men may make one with another, and yet still be in the state of nature" (Locke II, 14)[454] Simmons states,

> "It is hard to argue with claims that capture so much of the true spirit of Locke's account, but Dunn's position seems to me not quite accurate. Men can be in the state of nature long after they have changed the condition God set them in. As I argue below, there is no particular set of rights and duties possessed by all persons in the state of nature. Perhaps we can say that Dunn's claims give a fair characterization of that "original" state of nature to which each person is born, leaving aside *later*

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[449] Locke relies on many other examples from history. See Locke II, Para. 100–115 (especially 102). For more references and modern support, see p. 86.

[450] Simmons, (1989), 463.

[451] Simmons, (1989), 459, 460.

[452] Simmons, (1989), 459, 460. "Locke never really characterized the state of nature as 'a state of peace, goodwill, mutual assistance, and preservation' any more than he describes it as a state of 'enmity, malice, violence, and mutual destruction' (19). Both descriptions are of possible states of nature, but neither is of the state of nature. The contrasting descriptions in s.19 are quite plainly intended as descriptions of the best and the worst that the state of nature can be. Where persons almost always abide by the laws of nature, the state of nature will be one of peace, goodwill, and the like; where persons disregard the law, the state of nature will be a state of enmity, malice, and so on. But since people will almost always behave in a way that falls between these extremes, the social characterization of the state of nature that dominates the Treatises is also a mixed account of the sort with which we began. No amount of struggling will make other passages in Locke yield anything but a 'mixed' social characterization." Ibid. This interpretation goes along with Ashcraft, (1986), 581.

[453] Simmons, (1989), 463 (emphasis added).

[454] Simmons, (1989), 468, note 23.

instantiations of that state." (emphasis added)[455]

I thus agree (see Locke II, 14) that the world will always have people in this state, or as Simmons says, future or "later instantiations" of this state. Further, for Locke, a visitor to legitimate alien states is in the state of nature with regard to the citizens of the visited state, but not with regard to his own state (Locke II, 9).[456]

> "I doubt not but this will seem a very strange doctrine to some men: but before they condemn it, I desire them to resolve me, *by what right any prince or state can put to death, or punish an alien, for any crime he commits in their country*. It is certain their laws, by virtue of any sanction they receive from the promulgated *will of the legislative, reach not a stranger*: they speak not to him, nor, if they did, is he bound to hearken to them. The *legislative authority, by which they are in force over the subjects of that commonwealth, hath no power over him*. . . . I see not how the magistrates of any community can punish an alien of another country; since, in reference to him, they can have no more power than what every man naturally may have over another." (Locke II, 9, emphasis added).

Accordingly, I agree with Simmons that this state is not only bound to the past—it is timeless. This can cover Locke's "later instantiations" of this liberating state of nature.[457] Future and present peaceful and liberating states of nature are possible in each. I demonstrate that it is a personal state of awareness of the law of reason while denying self-passion and abiding by natural law limits for the common good. This state of awareness becomes possible when realizing that each must go above the "conveniences" of the self (also identified with the animal kingdom) and make decisions that are better for all. I thus argue that the different possibilities within Locke's state of nature depend on how many people respect the natural law for the preservation of the whole—how many follow reason in action. I would join partly both Dunn and Simmons. I defend Dunn's description of Locke's state of nature as desired by the Creator.[458] However, I add that for Locke, it is not just an historical state but also a state that can be experienced in any time (Locke II, 9, 14). To corroborate Locke's assertion that there are always men in the state of nature, Locke cites Hooker, saying that the law of nature binds any man by virtue of his being a man (Locke II, 4).

> "To understand political power right, and derive it from its original, we must consider, what state *all men are naturally in*, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, *within the bounds of the law of nature*, without asking leave, or depending upon the will of any other man." (Locke, II, 4, emphasis added)[459]

For Locke, all men, by virtue of being human, different from other creatures, are under the law of nature. "[L]aw, common to them all, he and all the rest of mankind are *one community, make up one society, distinct from all other creatures*"(Locke II, 128, emphasis added). Locke repeats that the law of nature derives from human nature and binds with or without the creation of societies (Locke II, 15).

> "*To those that say, there were never any men in the state of nature*, I will not only oppose the authority of the judicious Hooker, Eccl. Pol. lib. i. sect. 10, where he says,

[455] Simmons, (1989), 468, note 23.
[456] For the support of Simmons see p. 78.
[457] Simmons, (1989), 468, note 23.
[458] Dunn, (1984), 47. See also Dunn, (1969), 97, 103.
[459] See citation on p. 73.

> The laws which have been hitherto mentioned, i.e., *the laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship*." (Locke II, 15, emphasis added)

Locke goes further by suggesting than any man, by virtue of his humanity, even if having never joined a society, has the capacity to reach this state of nature and be bound by the law of nature (Locke II, 15). For Locke, "[A]ll men are naturally in that state [of nature] . . . ; and I doubt not in the sequel of this discourse, to make it very clear" (Locke II, 15). Here, Locke doubts not that "all men are naturally in that state" of nature.[460] Locke does not think that only rulers or princes can be in the state of nature. Locke explicitly states that any person could be in a common-wealth in relation to others yet "still in the state of nature with the rest of mankind" (Locke II, 145). The "whole community is one body in the state of nature, in respect of all other states or persons out of its community" (Locke II, 145).

> "There is another power in every common-wealth, which one may call natural, because it is that which answers to *the power every man naturally had before he entered into society: for though in a common-wealth the members of it are distinct persons still in reference to one another, and as such as governed by the laws of the society; yet in reference to the rest of mankind, they make one body, which is, as every member of it before was, still in the state of nature with the rest of mankind*. Hence it is, that the controversies that happen between any men of the society with those that are out of it, are managed by the public; and an injury done to a member of their body, and engages the whole in the preparation of it. So that under this consideration, *the whole community is one body in the state of nature, in respect of all other states or persons out of its community*." (Locke II, 145, emphasis added).

Locke thus gives sufficient examples in his *Second Treatise* of different possibilities within the state of nature, for all persons, even before the creation of societies: "*[T]he laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship*" (Locke II, 15, emphasis added); "it is plain the *world never was, nor ever will be, without numbers of men in that state*" (Locke II, 14, emphasis added). A visitor to legitimate alien states is in the state of nature with regard to the citizens of the visited state, but not with regard to his own state (Locke II, 9). This suggests that Locke's state of nature continues to exist after the creation of society. This goes for rulers of independent government, for all persons and members of the human community, and for every man by virtue of his being a man (Locke II, 4, 128, 15, 145).

Simmons's interpretation is in accordance with my argument that Locke's references to the state of nature are mere descriptions of optional possibilities. As such, I join Simmons in that Locke only brings optional possibilities to his state of nature. He lists many examples of men being in the state of nature and then uniting into societies:

> "The promises and bargains for truck, &c. between the two men in the desert island, *mentioned by Garcilasso de la Vega, in his history of Peru; or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature, in reference to one another*: for truth and keeping of faith belongs to men, as men, and not as members of society." (Locke 14, emphasis added. See also Locke II, 100–115)

Locke writes, "I have given several examples, out of history, of people free and in the state of

[460] For full citation and references, see p. 30.

nature, that being met together incorporated and began a commonwealth" (Locke II, 103). But

> "[t]hat it is not at all to be wondered, that history gives us but a very little account of men, that lived together in the state of nature. The inconveniences of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated, if they designed to continue together." (Locke II, 101)

Simmons cites the references in the *Second Treatise*, suggesting that the state of nature can take different forms (Locke II, 107, 111); it could be a primitive state with few movables (Locke II, 107)[461] or (contrary to Hobbes) a civilized state with property and commerce (Locke II, 111).[462] Simmons confirms that Locke indeed provides historical examples (Locke II, 100–115) of men in the state of nature who voluntarily formed a commonwealth.[463]

As Simmons suggests, such examples are relevant in demonstrating "how probable it is, that people were naturally free" (Locke II, 112). For Simmons, it is not a "decisive" role, but "respectable" for history to demonstrate Locke's argumentation.[464] I use this corroboration and also find Locke's historical examples of men in a state of nature supporting the argument that this state is real and has existed in the past—which can be proven.

Because it is an extant state (historically supported), Locke's theory is valid. Ashcraft noted that

> "if the state of nature is but a fiction abstracted from history, that in itself may be grounds for rejecting its usefulness as a concept. Marx, for example, is critical of the 'state of nature' approach to politics because it assumes in an abstract fashion precisely what must be proven by reference to concrete historical facts."[465]

As Locke provides actual examples of this state in history, it cannot be fictional and is difficult to reject. Ashcraft goes further when he notes that the ideal state of nature would produce men of a highly evolved morality.[466] Locke demonstrated that it is possible for men to become "moral beings" and think for the good of the whole.[467] Ashcraft suggests that Locke

> "is aware that if men could live in an ideal state of nature, they would cease to be men and become gods. But if, on the other hand, men could not live according to the Law

[461] "The equality of a simple poor way of living, confining their desires within the narrow bounds of each man's small property, made few controversies, and so no need of many laws to decide them, or variety of officers to superintend the process, or look after the execution of justice, where there were but few trespasses, and few offenders" (Locke II, 107).

[462] "But though the golden age (before vain ambition, and amor sceleratus habendi, evil concupiscence, had corrupted men's minds into a mistake of true power and honour) had more virtue, and consequently better governors, as well as less vicious subjects, and there was then no stretching prerogative on the one side, to oppress the people . . . . yet, when ambition and luxury in future ages* would retain and increase the power, without doing the business for which it was given; and aided by flattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully the original and rights of government; and to find out ways to restrain the exorbitances, and prevent the abuses of that power, which they having intrusted in another's hands only for their own good, they found was made use of to hurt them (Locke II, 111).

[463] Locke II, 14, 100–115. See Simmons, (1989), 461–462.

[464] Simmons, (1989), 462.

[465] Ashcraft, (1968), relying on Marx, (1960), 17. See also Ashcraft, (1968), 898.

[466] Ashcraft, (1968), 907.

[467] Ashcraft, (1968), 234 and 907.

> of Nature in their natural condition, they could not distinguish themselves from the beasts. Locke's objective is limited: to prove that it is possible for men to live in obedience to natural law, and, on that basis, to show that they are moral beings."[468]

I understand this view that an ideal natural law society could make men morally evolved, almost like gods (Locke compares this to the goodness of the perfect use of reason).[469] I add, however, that there is nothing contradictory in that thinking. Locke used Genesis as a source of property rights,[470] noting that the Creator desires that we "dress" and "keep"[471] God's creation or "subdue"[472] it for the benefit of all. Locke interprets "subdue" as "ameliorate for the benefit of life (Locke II, 32). It is thus the role of man to become more moral beings, use reason, and dress and keep God's creation to better ameliorate it for the benefit of all. God's intention for men is clear in Psalm 8:

וַתְּחַסְּרֵהוּ מְּעַט, מֵאֱלֹהִים;וְכָבוֹד וְהָדָר תְּעַטְּרֵהוּ.	6 Yet Thou hast made him but little lower than the angels, and hast crowned him with glory and honour.
זַתַּמְשִׁילֵהוּ, בְּמַעֲשֵׂי יָדֶיךָ;כֹּל, שַׁתָּה תַּחַת-רַגְלָיו.	7 Thou hast made him to have dominion over the works of Thy hands; Thou hast put all things under his feet[473]

The interpretation is that man would be honoured with glory, much like angels (in Hebrew the word used is "God") if man would rule the creation of God by the "work of their hands."[474] At the same time, I agree with Ashcraft that as long as men do not obey natural law for the preservation of others, they are little different than beasts. As Ashcraft observes, Locke's intent is to demonstrate that men can be higher in nature than the beasts in caring for the preservation not only of their own priorities but also of the priorities of others. It is this caring for others that makes man moral and dignified. [475]

These authors, who seem in opposition, are all partly right. Dunn suggests that Locke's state of nature is that which the Creator desires as a heavenly state but is not an historical, theological state.[476] Simmons indicates that for Locke, this state has always existed and always will exist, and that Locke's historical examples support this notion.[477] Locke presents different examples of this state, which depend on how many choose to follow the law of reason.[478]

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[468] Ashcraft, (1968), 907.
[469] See footnote 19 and p. 145.
[470] Locke uses Genesis as a source for his property doctrine (p. 146).
[471] See p. 160.
[472] See p. 160.
[473] Book of Psalms, Ch. 8, Para. 6-7. Used Hebrew –English Bible website (within Bibliography).
[474] Book of Psalms, Ch. 8, Para. 6-7.
[475] For further support of a peaceful state of nature from Locke's predecessors and supported by modern authors, see p. 110.
[476] Dunn, (1984), 47. See also Dunn, (1969), 97, 103.
[477] Simmons, (1989), 459, 460, 462, 468.
[478] See also p. 97, below.

3.3.3.1.5 Locke's possible state of peace via negative inferences

Hereunder, I provide references from Locke that allow the reader to infer that throughout history and even today, a majority of humans does not follow or use their full capacity to reason. Most make self-interests, vices, and appetites their first priority (Locke II, 123). They do not follow their own reason, which guides them in the responsible natural law limitation for the common good.[479] Not using reason makes man little more than an animal,[480] guided by the tyranny of passions (Locke II, 63 below). Humans are all born with the capacity to reason but only the actual exercise of reason brings freedom.[481] It is the use of reason that makes a man a free, responsible, rational human.

3.3.3.1.5.1 Negative inferences that the "greater part" of humanity does not follow reason

Locke claims that the "greater part" of humanity does not use reason for the guidance of their actions: "*[T]he greater part no strict observers of equity and justice*, the enjoyment of the property he has in this state is very unsafe, very unsecure" (Locke II, 123, emphasis added). To Locke, the "greater part" of humanity does not observe the law of reason, or justice and equity, resulting in an unsafe state of nature due to the invasion of those who do not collaborate with reason.[482] It may be that if one day a simple majority does start to obey reason for the good of the whole, the state of insecurity could be replaced with a state of peace and mutual understanding (Locke II, 123).

Seliger (1963) comments as follows: "It follows that if natural law were *fully observed by all men*, they would live in one world-community."[483] Further, "Indeed, since *degenerate men seem to be in the majority*" (Locke II, 123; "the greater part", emphasis added), "it would have been self-defeating to maintain that the greater the number of people who consent to something, the greater is the observance of natural law; exception being made for the hypothetical case when all mankind, and not just the majority, are inclined to live peacefully in one world- community" (emphasis added).[484]

I use Seliger as confirmation of my interpretation that most of mankind does not use the guidance of reason. Yet I object to his inference that for a peaceful community, all men have to observe natural law. Connecting the negative inferences, I demonstrate that this is not the case. Locke's statements suggest that this peaceful state of nature could become a reality if a simple majority of men follow reason.

Locke claims that the greater part of humanity does not practice using reason. Locke demonstrates that natural law principles are not used by at least by half of mankind. He says that greater part of humanity do not use and practice reason.

> "I agree with these defenders of innate principles, that if they are innate, they must needs have universal assent. For that a truth should be innate, and not assented to, is to me as unintelligible, as for a man to know a truth, and be ignorant of it, at the same time. But then, *by these men's own confession, they cannot be innate, since they are not assented to by those who understand not the terms, nor* by *a* ***great part of those*** *who do*

[479] See reason and the government of passions on p. 183.
[480] See analysis of the consequences of not following reason on p. 59.
[481] See references on the constant practice of reason, p. 179.
[482] For agreement, see Myers, (1995), 629-639.
[483] Seliger, (1963), 346, emphasis added.
[484] Seliger, (1963), 346, emphasis added.

understand them, but have yet never heard or thought of those propositions…which I think, is ***at least, one half of mankind***." (emphasis added).[485]

He goes on to say that "a great part of those who do understand them, but have yet *never heard or thought of those propositions*…which I think, is *at least, one half of mankind*." It is evident and "sufficiently proven(n)" that a majority or a "greater part" of men do not use their capacity to reason. Locke concludes "[t]hat the general maxims, we are discovering of, are *not known* to children, idiots, and ***greater part of mankind***, *we have already sufficiently proved*" (emphasis added).[486] To Locke thus, it is clear in that the "greater part" of humanity does not make any effort to use reason and see above the "smoke of his own chimney."[487]

Further, in his *Second Treatise*, Locke writes that the law of nature is plain and easy to understand to those who use the capacity to reason and to a "studier of that law." It is even easier to understand than the positive law of governments, as much as reason is easier to understand above the "fancies and intricate contrivances of men." The moment the person becomes rational and uses reason for the guidance of his acts instead of following his own appetites and desires, natural law becomes clear and evident (Locke II, 12, 124). According to Locke, a greater part of humanity does not follow reason because they are blinded and biased by selfish interests and desires (Locke II, 12, 124).[488] Most people do not use reason as a guide but are biased by the government of passion and desires.[489] Locke reiterates this by demonstrating that most humans follow customs and habits in their thoughts and actions rather than reason.[490] If a majority decides to follow reason, the unsafe state of nature will become a peaceful state. Locke shows that most nations have not lived by natural law limitations of morality. He demonstrates that very few men are rational beings who follow reason.[491] For further corroboration from past civilizations, see Locke's *Essay on Human Understanding* (Bk I. Ch. III. Sec. 9, 12).[492]

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[485] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 24.
[486] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 27.
[487] Locke, (1689), *Human Understanding*, Bk. I, Ch. 3, Para. 2.
[488] See p. 29, p. 32, p. 177, and p. 178 .
[489] See full analysis in the chapter on reason above the government of passions, p. 183.
[490] Locke, (1633) *Questions Concerning the law of nature*, Bk. I, Ch. 3, Para. 24-25; Bk. II, Ch. 28, Para.12; Bk. IV, Ch. 16, Para. 4, Questions, 127, 135.
[491] See also Locke, (1689), *Human Understanding*, Bk. I, Ch. 3, Para. 10: *"He that will carefully peruse the history of mankind*, and look abroad into the several tribes of men, and with indifference survey their actions, will be able to satisfy himself, that *there is scarce that principle of morality to be named*, or rule of virtue to be thought on (those only excepted that are absolutely necessary to hold society together, which commonly, too, are neglected betwixt distinct societies) which is not, somewhere or other, slighted and condemned by the general fashion of whole societies of men, governed by practical opinions and rules of living…" (emphasis added).
Sec 11. "[I]t is *impossible to conceive, that a whole nation of men should all publicly reject and renounce what every one of them, certainly and infallibly, knew to be a law: for so they must, who have it naturally imprinted on their minds. It is possible men may sometimes own rules of morality, which, in their private thoughts, they do not believe to be true*, only to keep themselves in reputation and esteem amongst those, who are persuaded of their obligation. But it is not to be imagined, that a whole society of men should publicly and professedly disown, and cast off a rule, which they could not, in their own minds, but be infallibly certain was a law; nor be ignorant, that all men they should have to do with, knew it to be such: and therefore must every one of them apprehend *from* others, all the contemt and abhorrence due to one, who professes himself void of humanity; and one, who, confounding the known and natural measures of right and wrong, cannot but be looked on as the professed enemy of their peace and happiness" (emphasis added).
[492] *Sec 9.* "Robberies, murders, rapes, are the sports of men set at liberty from punishment and censure. Have there not been whole nations, and those of the most civilized people, amongst whom the exposing their children,

In Locke's (1633) *Questions*, he notes that many nations have lived in ignorance of the natural law (Locke 1633, *Questions*). Throughout history, few have lived in accordance with natural law. Locke also writes that "three things that govern mankind are ***Reason***, Passion, and Superstition; *the **first governs a few***, the *two last share the bulk of mankind* ... but superstition is most powerful, and produces the greatest mischiefs."[493] The majority do not use reason for guidance but passion and superstition.

Dunn (1969) writes that two years before *Reasonableness of Christianity*, Locke argues that "it was precisely the *brutish ignorance of the majority of the population* which makes it possible for ambitious and discontented Grandees to rouse revolts."[494] Here Dunn demonstrates that for Locke, the majority of men act in "brutish ignorance." Aristotle (350 B.C.E.) would agree that most men do not use reason:

> "*To judge from the lives that men lead, most men, and men of the most vulgar type, seem (not without some ground) to identify the good, or happiness, with pleasure; which is the reason why they love the life of enjoyment.* For there are, we may say, three prominent types of life—that just mentioned, the political, and thirdly the contemplative life. *Now the mass of mankind are evidently quite slavish in their tastes, preferring a life suitable to beasts.*" (emphasis added).[495]

Locke often mentions that the majority of men do not follow reason, which creates an unsafe place. So it is a reasonable inference that if men begin to follow reason as a guide (Locke II, 7), an unsafe place could become a state of peace and mutual self-preservation.

A majority of men following reason for the good of the whole might create a powerful and united community in a peaceful state of nature. This is a natural inference because when a majority acts based on self-inclination, there can only be conflict. So a majority working towards the good of all could create a place where it is easy to avoid wrongdoing by those who insist on preserve self and convenience by harming others. The pressure from the majority who feel obliged to defend others and their peaceful state against those acting against it would prevent others from wrongdoing. For Locke, almost every decision in society requires a majority unless specified otherwise.

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and leaving them in the fields to perish by want or wild beasts, has been the practice, as little condemned or scrupled as the begetting them?…Mingrelians, a people professing Christianity, to bury their children alive without scruple. There are places where they eat their own children. The Caribbees were wont to geld their children, on purpose to fat and eat them. And Garcilasso de la Vega tells us of a people in Peru, which were wont to fat and eat the children they got on their female captives, whom they kept as concubines for that purpose; and when they were past breeding, the mothers themselves were killed too and eaten. The virtues, whereby the Tououpinambos believed they merited paradise, were revenge, and eating abundance of their enemies. They have not so much as a name for God, and have no religion, no worship. The saints, who are canonized amongst the Turks, lead lives, which one cannot with modesty relate."

Sec 12. "[E]xamples before cited: nor need we seek so far as Mingrelia or Peru, to find instances of such as neglect, abuse, nay and destroy their children; or look on it only as the more than brutality of some savage and barbarous nations, when we remember, that it was a familiar and uncondemned practice amongst the Greeks and Romans, to expose, without pity or remorse, their innocent infants. Secondly, that it is an innate truth, known to all men, is also false."

This demonstrates the lack of morality throughout history.

[493] Emphasis added, see Locke, (1633), *Questions Concerning the law of nature*, Bk. IV, Ch. 16, Para. 4, Questions; 145-147, 183-199; Locke I, 55-59. See also King, (1830), 120 and; Myers, (1995), 642.

[494] Dunn, (1969), 235, emphasis added.

[495] Aristotle, (350 B.C.E.), *Nicomachean Ethics*, Bk. I, Ch. 5, p. 201. See full analysis on p. 198.

3.3.3.1.5.2 Locke's preference for a majority decision

Locke argues that a decision by the majority is assumed unless specified otherwise:

> "*Whosoever therefore out of a state of nature unite into a community,* must be understood to *give up all the power*, necessary to the ends for which they unite into society, *to the majority of the community, unless they expressly agreed in any number greater than the majority*. And this is *done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals, that enter into, or make up a commonwealth.* And thus that, which begins and actually constitutes any political society, is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any lawful government in the world." (Locke II, 97, emphasis added)[496]

A simple majority is the answer to most problems; the agreement to join as a people must be unanimous, but subsequent matters require a majority.

> "MEN being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the *majority have a right to act and conclude the rest*" (Locke, II, 95, emphasis added).[497]

A majority thus has the right to decide for the rest, and the positive law is only for the protection and security of properties in the wider sense. Moreover, "[a]nd therefore we see, that in assemblies, impowered to act by positive laws, *where no number is set by that positive law which impowers them, the act of the* ***majority passes for the act of the whole****, and of course* ***determines****, as having,* ***by the law of nature and reason, the power of the whole***" (emphasis added). Unless otherwise noted, the majority makes the decision for all.

> "And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, *to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact,* if he be left free, and under no other ties than he was in before in the state of nature. For what appearance would there be of any compact?" (emphasis added)

Locke elaborates on the necessity for everyone to agree to the wishes of the majority. If there is no compliance, there is no compact and no society. The majority guides per the mutual original societal agreement. And "[w]hosoever therefore out of a State of Nature unite into a Community, must be understood to give up all the power, necessarily to the ends for which

[496] See Kilcullen, (1983), 332.
[497] See also Dienstag, (1996), 996.

they unite into Society, to the *majority of the Community, unless they expressly agreed in any number greater than the majority…*' (Locke, II, 99, emphasis added).

Another reference in Locke's *Second Treatise* regarding his support for majority rule is in Sec. 140: "But still it must be with his own consent, i.e. the *consent of the majority*, giving it either by themselves, or their representatives chosen by them…."(emphasis added). Here too the consent of the majority is sufficient.

For possible modern support for the inference that a majority using reason can make an unsafe state a peaceful one, see Rabkin (1997): "Locke does not conceal the democratic or populist implication of this perspective: *each society is governed 'chiefly'* by the *usages of the majority or of 'the greatest part'—not by the wisest or the best.*"[498] Here, Rabkin confirms that each society is governed by the usage of the greatest part or majority—not necessarily by the best or wisest.

See also Dunn (1975), who states that for Locke, "the ***majority of the population*** *contriving to grasp a complete deductive system of* ***ethical obligation by rational reflection***. *Certainly no community in the world today has come within intelligible distance of contriving such a feat.*"[499] Dunn also observes that Locke desires a society with a majority of rational men. No community in the world could reach that state without a majority of rational men obeying natural law obligations. A traditional modern interpreter of Locke, Kendall (1959) demonstrates how the *Second Treatise* supports majority rule,[500] which supports the conclusion that a majority following reason could lead to a peaceful state. But I strongly object to Kendall's use those same references to claim that Locke's majority overrules the whole without limitation. Kendall argues that Locke's text indicates certain limitations but does not properly develop those limitations, a "principal weakness" of the *Treatise*.[501] He claims that Locke was the first to end the debate on duty and absolute individual rights for the sake unlimited majority rule: "The [Lockean] law of nature is, in short, a law which commands its subjects to look well to their own interests."[502] This specifically ignores all of Locke's references to the common good and his eternal and absolute limitations for the common good.[503] This thesis contradicts this interpretation of Locke; the purpose of reason is to discover duties to others while limiting the self, if not in conflict.

3.3.3.1.5.3 Negative inferences from Locke's claim that reason exists for self-preservation

Locke clearly believed that reason leads to a state of liberating rights with corresponding obligations and no harm to others (Locke II, 4, 6, 7, 128, 111). This is unlike the state of war, calling instead for safe and mutual preservation (Locke II, 19, 21). Men are also equally able to preserve self and pursue harmless goals without the interference of others (Locke II, 5).

Natural law and reason work towards common equity and mutual safe preservation. Sec. 7 notes that "all men may be restrained from invading others rights, and from doing hurt to one another, and the *law of nature be observed, which willeth the peace and preservation of all mankind*" (Locke II, 7, emphasis added). "[T]he *peace and safety* of it, [is] provided for by the law of nature" (Locke II, 8, emphasis added). Reason is the "common equity" given to

[498] Rabkin, (1997), 309, emphasis added.
[499] Dunn, (1969), 235, emphasis added.
[500] Locke II, 95, 96, 97, 99, 132.
[501] Kendall, (1965), 1165.
[502] Ibid., p. 77.
[503] See the chapter on limits on p. 210, and Locke's concern for the whole, p. 100.

mankind for their "mutual security": "In transgressing the law of nature, the offender declares himself to live by another rule than that of *reason* and *common equity*, which is that measure God has set to the actions of men, for *their mutual security*" (Locke II, 8, emphasis added).

The following negative inferences are used as further support for Locke's use of reason in demonstrating the inverse—that not using reason one can put one in an unsafe state of nature or even a state of war.

Take Locke's *Second Treatise*, section 172. This passage demonstrates that for Locke, not using reason basically results in a state in which man "*puts himself into the state of war with another*: for *having quitted reason*, which God hath given to be the rule between man and man...and having *renounced the way of peace which that teaches*, and *made use of the force of war*" (Locke II, 172, emphasis added).[504] For Locke, following reason and the way of peace could bring about a state of peace.[505]

Similarly, Locke considers it an injury to attack property, life, liberty, or possessions. In such a case, the offender loses natural law protection and puts himself in a state of war: "[he] declares himself to live by another rule than that of reason *and common equity*" (Locke II, 8, emphasis added). Violating the law of nature violates reason (also called common equity). Reason is a gift for the mutual security of men. Anyone not following it and who uses force without the right to do so becomes a danger to mankind. The relevant inference is that a man following reason "and common equity" is more likely to be in a state of peace, acting for mutual security.

The same negative inferences can be drawn from Locke's references below that about those who renounce reason, the same tool given to humanity to teach them about the peaceful preservation of all mankind (Locke II, 7, 172). For Locke, following reason bestows dignity and distinguishes man from beast; the use of reason is attached to human nature; no one can renounce it without sinking to the level of beasts (See Locke II, 8, 10, 11, 16, 63).[506]

Locke also indicates that freedom is granted by the use of reason and free choice (Locke II, 63). It is not at all liberating not to follow reason because man becomes like a wild animal governed only by passions and desires, with no higher guidance as to his true, dignified nature. As long as we are not following reason, we are in an unsafe state, governed by our

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[504] See citation and analysis on p. 61, above.

[505] See also Locke II, 163. Here, Locke makes it clear that the only aim of the government must be for the public good. No other end is valid. Locke further demonstrates that a *society that is not governed by reason* is compared to *inferior creatures under the dominion of a master who works them for his own pleasure*. This allows me to infer that those who do not follow reason are compared to inferior creatures controlled by their passions and desires. For Locke, being *void of reason means being "brutish."* This allows me to infer that society governed by reason would be free to choose what is valid. "[F]or the end of government being the good of the community, whatsoever alterations are made in it, tending to that end, cannot be an encroachment upon any body, since no body in government can have a right tending to any other end: and those only are encroachments which prejudice or hinder the public good. Those who say otherwise, speak as if the prince had a distinct and separate interest from the good of the community, . . . And indeed, if . . . the people under his government are not a society of rational creatures, entered into a community for their mutual good; they are not such as have set rulers over themselves, to guard, and promote that good; but are to be looked on as an herd of inferior creatures under the dominion of a master, who keeps them and works them for his own pleasure or profit. If men were so void of reason, and brutish, as to enter into society upon such terms, prerogative might indeed be, what some men would have it, an arbitrary power to do things hurtful to the people." Locke II, 163, emphasis added.

[506] Varying from reason makes one a dangerous creature. Locke II, 11. Renouncing reason and using force without right is a declaration of war against mankind and its security. See also Locke II, 16. For Locke, without the common law of reason, there must be only war and violence. Men who do not use reason are dangerous to the rest of mankind. See p. 59.

passions, weakness, and lack of choice. This again implies that following reason puts us in a safe state of freedom of choice.

The notion that reason leads to safety and peace for all mankind supports my argument via the negative inference that by following reason, a peaceful state of nature might follow.[507] An individual is in an unsafe state of nature, or even a state of war, by not following reason and using force without the right to do so. Inversely, Locke promoted the use of reason with natural law limits to ensure a safe state of peace. This is also confirmed by Locke's direct claims that we are endowed with reason for our own protection as well as safe and peaceful, mutual preservation (Locke II, 7, 8, 128, 6).[508]

3.3.3.1.6 Other evidence demonstrating Locke's moral state of peace

3.3.3.1.6.1 Adam's descendants and the use of reason

In his *Reasonableness of Christianity*, Locke states that God created men with reason to be used and followed. Men were created to live in peaceful preservation guided by reason:

> "It was such a law as the *purity of God's nature required, and must be the law of such a creature as man; unless God* ***would have made him a rational creature****, and not required him to have lived by the law of reason*; but would have countenanced in him ***irregularity and disobedience*** to that light which he had, and that rule which was suitable to his nature; which would have been to have authorized *disorder, confusion, and wickedness* in his creatures…." (Locke (1695), emphasis added).[509]

According to Locke, God created us with the capacity to reason so that we would follow reason's precepts. Not following it leads to wickedness, disorder, and confusion. Man was initially born with the full capacity to reason and lived under its rule (Locke II, 57).[510] Adam's descendants, however, were (and are) born ignorant to the law of reason. "Adam's children, being *not* presently as soon as *born under this law of reason, were not presently free*" (Locke II, 57, emphasis added). All descendants of Adam and Eve are born into an unsafe state of nature, being without the guidance of reason. Humanity is thus born with capacity to reason but ignorant of its use as it requires practice and application.[511] The onus is on them to acquire it by governing their own passions and acting within the limits of reason.[512]

3.3.3.1.6.2 Self-order in one community in a peaceful state

Locke also explains that in a peaceful state of nature, a detailed positive law is not required

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[507] See p. 59.
[508] See more on the aim of natural law on p. 99.
[509] Locke, (1695), *The Reasonableness of Christianity*, Vol. 6, 'The Reasonabless of Christianity, as delivered in the Scriptures', Para. 14. See also: "Adam was turned out of paradise, so all his posterity were born out of it . . . . void of the tranquility and bliss of paradise. . . . with the goodness, and other attributes of the supreme Being, which he has declared of himself; and reason, as well as revelation, must acknowledge to be in him . . . . *It was such a law as the purity of God's nature required, and must be the law of such a creature as man; unless God would have made him a rational creature, and not required him to have lived by the law of reason*" (emphasis added). Locke, (1695), *The Reasonableness of Christianity*, Vol. 6, 'The Reasonabless of Christianity, as delivered in the Scriptures', Para. 6. See p. 172.
[510] See full citation under the state of awareness on p. 64.
[511] See reference and analysis on p. 176.
[512] For references on governing passions, see p.183. This view of fallen man lacking reason is confirmed again by Locke's influences, Grotius and Pufendorf. For sources detailing Locke's sincere love for others, see p. 113.

(Locke II, 128).[513] Without the corruption and viciousness of men, there would be no need for positive societal rules that divide human community into separate parts. This allows me to infer that Locke believes in a moral state where no positive law is necessary if the natural law limits are met for the preservation and protection of the whole. "And were it not for *the corruption and viciousness of degenerate men*, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations" (Locke II, 128).[514] Similarly, Grotius and Pufendorf posit this possible peaceful state of nature by arguing that if people act using reason and avoid harming one another, the self-order of peaceful mutual forbearance and understanding is possible.[515]

3.3.3.1.6.3 Inference for a peaceful state with better possibilities and a simplicity of needs

Within his *Second Treatise*, Locke describes the first stages of property rights via labour as a state in which people live on what they can consume and use, so there is "no doubt of Right, and no room for Quarrel" (Locke II, 39). Each person is to respect the natural law limits so that no harm is done to others. Simplicity of needs resulted in no temptation to labour for more than one could use (Locke II, 51).[516]

This resembles Grotius's comments on the simplicity of needs. Grotius points to ancient Hebrew writings, such as the book of Revelation, which note that man was created with simple material needs. It was with the extension of the appetites that caused man to labour more to gratify the self instead of for the preservation of others and the whole. Simplicity freed men from the chains of evil passions; by consulting reason, they acted for the good of others instead of the self only.[517] As such, Grotius saw a state of nature of mutual affection in which continued "great simplicity," "innocence," and "remarkable charity" were required.[518]

3.3.3.2 Conclusion regarding Locke's possible peaceful state of nature

There are sufficient direct references suggesting that Locke believed in a possible peaceful state of nature guided by reason and granting liberating rights with corresponding obligations (Locke II, 4, 6 128, 111); this state differed from the state of war (Locke II, 21) and was described as a state of "good will, mutual assistance and preservation" (Locke II, 19). All men had equal right to pursue harmless goals without the interference of others (Locke II, 5). A

[513] For further analysis of Locke II, 128, see p. 74.
[514] Ibid. p. 74 (emphasis added).
[515] See p. 80, notes 426 and 427.
[516] "[I]t is very easy to conceive . . . how labour could at first begin a title of property in the common things of nature, and how the spending it upon our uses bounded it. . . . Right and convenience went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of. This left no room for controversy about the title, nor for encroachment on the right of others." Locke II, 51.
[517] "A state of affairs, which could not subsist but in the greatest simplicity of manners, and under the mutual forbearance and good-will of mankind. . . Tacitus says, that in the early ages of the world, men lived free from the influence of evil passions, without reproach, and wickedness; . . . a simplicity, ignorant of evil, and inexperienced in craft: a simplicity which in the book of Wisdom seems to be called integrity, and by the Apostle Paul simplicity in opposition to subtlety. . . as it is explained by the ancient Hebrews, whose opinion is confirmed by the Book of Revelation . . . . Solomon says, God hath created men upright, that is, in simplicity, but they have sought out many inventions, or, in the language of Philo, they have inclined to subtlety . . . contriving many subtle inventions no way conducive to the good of life; and using their strength not to promote justice, but to gratify their appetites." Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2.
[518] For further references on the lack of justice, see Grotius, (1625), *War and Peace*, Bk. I. Ch. 2. Sec. 1, Para. 5; Bk. II, Ch. 1. Sec. 4.

peaceful moral state is thus specifically mentioned as a possibility. All that is left to understand is when and under which conditions it may appear.

We see that Locke's state of nature could exist at any time (Locke II, 14, 9) when individuals use reason as a guide to natural law limits to protect the common good.[519] I thus infer that a like general state is possible. Locke claims that man becomes fully rational when he is aware of duties and limits.[520] However, the greater part of humanity does not follow reason because they are blinded and biased by selfish interests and desires (Locke II, 12, 124). From this I infer that in overcoming our own selfish conflicting interests, we become more aware of the law of reason. We also see that by not following the guidance of reason that leads to a safe preservation (Locke II, 7), humans become little more than animals acting on their selfish desire for self-preservation, their instincts, and their passions (Locke II, 8, 10, 11, 16, 63, 172).

Locke also claimed that most people prefer to follow their own passions and do not follow reason and its limits (Locke II, 123, 124, 12). This results in an unsafe state of nature in which people seek to gratify themselves only and are governed by passion, pride, and the desire for honour or privilege. Locke further demonstrates that a majority decision (Locke II, 95, 96, 97) guides in society. Only the connection of these ideas is lacking. I infer that for Locke, when a majority begins to follow reason and acts within natural law limits to ensure the common good instead of heeding their own passions, a general peaceful state of nature of safe and mutual preservation could exist. Dunn supports this possibility but sees this state as an unattainable, theological state.[521] I disagree and say that according to Locke, such a peaceful state is possible, even if highly unlikely. The feasibility of such a state of nature is irrelevant, however; it is the demonstration of the possibility that matters.

The state of nature is not doomed to be "unsafe." Rather, Locke implies an actual possibility, no matter how unlikely, of a future peaceful state of liberties and obligations that produces a state of awareness of the responsibility to the common good. In such a state of nature, the accumulation of property is protected. Each person could appropriate with "delight" the means for his or her self-preservation and convenience (Locke II, 128) as long as no others are harmed, and as long as they respect the same rights of others by acknowledging limits of the natural law (Locke II, 4, 6, 7). This future peaceful state could explain Locke's confusing references[522] to his state of nature (the different proposed options compared to the fixed state of the past). As Ashcraft notes, such an ideal state of nature would produce highly morally evolved men.[523] I join his conclusion that Locke claims that it is possible for men to become "moral beings" and act for the good of the whole.

3.3.3.2.1 Conclusion on Locke's definition of the state of nature

Simmons argues that Locke's state of nature cannot be simply defined as a state without common authority (Locke II, 19)[524] but that it describes a few possible states: peaceful,

[519] See "The use of reason for the government of passions," p. 183.
[520] See awareness to the law of reason on p. 64. The natural law is clear to those who use reason, p. 176.
[521] Dunn, (1969), 235.
[522] See references detailed on p. 67.
[523] Ashcraft, (1968), 907.
[524] See references in footnote 345.

unsafe, or even a state of war (Locke II, 19, 21).[525] I argue that this depends on whether people follow the law of nature and its limits.

Locke thought that man was originally created with the full capacity to reason; after the fall, man was born ignorant, without the ability to reason. Instead, reason had to be purchased with hard work in subduing selfish passions and desires.[526] For Locke, the majority of men do not follow reason due to their own self-inclinations that blind them from it (Locke II 12, 124). So since the dawn of man, the state of nature has always been unsafe.[527] Locke agrees (Locke II, 13, 128) that this is mainly because of (Locke II, 13), the "corruption and viciousness of degenerate men" (Locke II, 128).

To settle the academic confusion about Locke's state of nature, I propose that it is a desired state of awareness to be achieved individually, by knowing and following reason above one's own passions. This explains why, for Locke, each individual can reach this state in all times (Locke II, 14). This also explains Locke's argument that there will always be people in this state. My interpretation is consistent with Locke's definition of the law of nature as a law that exists only in the minds of men (Locke II, 136).[528]

My observation is thus similar to Simmons's observation[529] but differs mainly with regard to this state involving an awareness of the law of reason and in which one becomes rational. This answers Simmons's criticism that Dunn did not consider "later instantiations" of that state.[530] Although Dunn claims that the state of nature is theological and unattainable, I argue that it is a real state of awareness that can be experienced individually if a person consults reason. From all references analysed above, I conclude that Locke's state of nature cannot be defined only by its lack of a common judge but by all its virtues as a natural state desired of all men, whereby all men are perfectly equal (Locke II, 5) in their freedom to order their actions with no dependence on the will of another within the limits of natural law and guided by reason. This is quite consistent with Locke's own words in his *Second Treatise*.[531] Locke's references to different possibilities of the state of nature only demonstrate Locke's emphasis on the Creator's grant of equality in the freedom of choice that each individual possesses in this state of nature. Locke's state of nature is the desired natural state of rights and obligations that all experience by virtue of being human.[532] This includes the offspring of Adam, who, by not following reason, are excluded from this state. The capacity to reach this state is within each human who learns to follow reason properly, eschewing selfish passions. This state existed before humanity lost the full use of reason and became ignorant of its law.

Throughout human history, without relating it to a prior heavenly condition, there has been no known period in which a majority of men followed the liberties and obligations of reason as interpreted by Locke and his predecessors. No human society has yet been guided by a majority of persons following the moral limits of the law of nature. When that day comes, Locke's best descriptive statements of the peaceful state of nature will come true.

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[525] Simmons, (1989), 459, 460. See footnote 452.
[526] See The use of reason for the government of passions," p. 183.
[527] See historical examples on p. 86.
[528] See precepts of natural law, p. 55. See also the concept of the state of awareness on p. 64.
[529] See p. 69, and p. 83.
[530] See a discussion of "later instantiations" on p. 84.
[531] Locke II, 4; see p. 73. Locke's state of nature thus is mere possible descriptions: It can be a peaceful state if a majority of men follow reason and an unsafe place if majority do not follow reason. For examples see p. 73, 81.
[532] Locke II, 4, 15, 128.

3.4 **The aim of the natural law: the peaceful preservation of the common good**

The preservation of all mankind is considered to be a fundamental law of nature (Locke II, 16, 135, 134, 159, 171).[533] The purpose of the law of nature is to guarantee the peaceful preservation of all mankind as a whole (as one community). Locke notes in Sec. 7, "and the *law of nature be observed, which willeth the peace and preservation of all mankind*" (Locke II, 7, emphasis added). The purpose is thus not just self-preservation but the peaceful preservation of all mankind while not violating individual rights. The aim of natural law is to provide guidelines for mankind to better preserve the whole and each individual separately—for a more peaceful and safe preservation: "the *peace and safety of it*, provided for by the law of nature" (Locke II, 8, emphasis added).

To go against the law of nature is to go against "reason" and "*common equity*," which is given to mankind for their "*mutual security*": "In transgressing the law of nature, the offender declares himself to live by another rule than that of *reason* and *common equity*, which is that measure God has set to the actions of men, for *their mutual security*" (Locke II, 8, emphasis added). Reason represents common equity and security for all.[534] For Locke, the law of nature provides not only a means of better preservation of the whole and individuals but also safety, peace, and mutual security.

3.4.1.1 Mankind as one community

Violating natural law creates a danger to the "whole species" and to "the peace and safety of it, provided by the law of nature." The law of nature is thus a law for mankind as a "*whole species*" (Locke II, 8). For Locke, the preservation under the law of nature is the preservation of the species as a whole, as one community. Locke clearly speaks of the law of nature as a law common to all men as one community: "the law of nature: by which law, *common to them all*, he and *all the rest of mankind are one community, make up one society, distinct from all other creatures*" (Locke II, 128, emphasis added). Mankind is described as "one community" "distinct from all other creatures." Locke then mentions that without those men who do not follow the rules of reason and harm others, there would be no need to separate mankind from this one community.[535]

The insistence on one community of men is repeated in section 145: "and as such as governed by the laws of the society; yet *in reference to the rest of mankind, they make one body, which is, as every member of it before was, still in the state of nature with the rest of mankind…*" (Locke II, 145, emphasis added). Locke demonstrates again that within the state of nature, men are to see themselves as one body.

Locke was certain that the law of nature's purpose is not only the preservation of the community as a whole but also the preservation of individual rights, as much as possible: "as the first and *fundamental natural law*, which is to govern even the legislative itself, is the *preservation of the society*, and as far as will consist with the public good) of *every person in it*" (Locke II, 134, emphasis added). It is "which nature, that willeth the *preservation of all mankind as much as is possible*" (Locke II, 182, emphasis added). Locke also writes that all

[533] See citations below. For similar inferences, see also Locke II, 149, 183.
[534] See p. 59.
[535] See p. 96.

men are to be preserved if possible; during a conflict, the safety of innocents is paramount: "for, by the *fundamental law of nature, man being to be preserved as much as possible*" (Locke II, 16, emphasis added).

3.4.2 Locke's preservation of "others" or the common good in the Second Treatise

Some references in the *Second Treatise* demonstrate Locke's concern for the preservation of "others" or the "rest of mankind" above the mere preservation of the self. I divide this subsection into the concern for the good of others within the state of nature and after the creation of societies. It will include modern relevant debate.

3.4.2.1 Within the state of nature

The traditional interpretation of Locke uses pieces of Locke's texts to justify the argument that Locke supports a theory of self-preservation alone. According to Macpherson, Locke suggests that "self-preservation" is the "first practical principle."[536] I reply that this specific reference (Locke 1.86) is taken from the *First Treatise*—but Locke's text on property is mainly within the *Second Treatise*, in which it is almost impossible to find the fundamental basis of self-preservation without a link to the necessary preservation of the rest of mankind. In any event, this is not a contradiction because Locke says "Every one, as he is *bound to preserve himself*, …so by the *like reason, when his own preservation comes not in competition*, ought he, *as much as he can, to preserve the rest of mankind*…' (Locke II, 6, emphasis added).

Kendall (1965) joins Macpherson and others: "The [Lockean] law of nature is, in short, a law which commands its subjects to look well to their own interests."[537] Among others, Strauss (1953) and Cox (1960) support this view and see Locke as a protector of pure self-preservation.[538] For Strauss (1953), Locke's natural law duties only apply in cases where our own preservation is not in conflict. In other words, any obligation ceases to exist if self-preservation is threatened. In Strauss's words, "The desire for happiness and the pursuit of happiness have the character of an absolute right, of a natural right. There is then a natural right, while there is no natural duty."[539] He then emphasis that "[s]ince happiness presupposes life, the desire for life takes precedence"; as such, he claims that for Locke, "[t]he most fundamental of all rights is … the right of self-preservation."[540]Cox (1960) agrees and adds the word "only" when it comes to the preservation of others according to Locke: "A man is bound to preserve the rest of mankind as much as he can, but *only* where his own preservation comes not in competition."[541] In fact, Locke does not use the word "only."[542] I admit that to Locke, reason dictates that being born creates a right to self-preservation: "natural reason, which tells us, that *men, being once born, have a right to their preservation*" (Locke II, 25).

> "…[F]or no man or society of men, having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another; when ever any one shall go about to bring them into such a slavish condition, they will

[536] Macpherson, (1962), 229; Locke I, 86.
[537] Kendall, (1965), 1167.
[538] Strauss, (1953), 165-166, 202-251; Cox, (1960), 76-80. See also Kendall, (1965), 77. For further detail, see p. 100 and p. 189.
[539] Strauss, (1953), 226-227.
[540] Strauss, (1953), 227; see 239 note 113.
[541] Emphasis added. Cox, (1960), 83.
[542] Kilcullen, (1983), 327, noting that Cox, (1960), 83 added the word "only" to Locke's text.

> always have a right to preserve, what they have not a power to part with; and to rid themselves of those, who invade this *fundamental, sacred, and unalterable law of self-preservation*, for which they entered into society..." (Locke II 149, emphasis added)

However, I argue that the fundamental law of self-preservation relates to the prohibition of its abuse by the government. Locke's references to the law of self-preservation are insufficient to negate the repeated comments regarding the correlating obligations to preserve the rest of mankind. I argue against Macpherson and followers that the *Second Treatise* as a whole focuses not only on the preservation of the self but also that the state of nature requires as an obligation to preserve others (if there is no conflict between the two): "Every one, as he is *bound to preserve himself*, and not to quit his station wilfully, so by the *like reason, when his own preservation comes not in competition*, ought he, *as much as he can, to preserve the rest of mankind*…' (Locke II, 6, emphasis added).

Locke continues and says that no one may impair the preservation of others, including life, liberty, health, body, or possession. It is to be protected by natural law, which is given for mankind's mutual security. Further,

> "The first power, viz. of doing whatsoever he thought for the *preservation of himself, and the rest of mankind*, he gives up to be regulated by laws made by the society, so far forth as the *preservation of himself, and the rest of that society* shall require; which laws of the society in many things confine the liberty he had by the law of nature." (Locke II, 129, emphasis added)

Locke also mentions the "right of self-preservation, … by the right he has of *preserving all mankind, and doing all reasonable things he can in order to that end…'* (Locke II, 11, emphasis added). So man must do whatever is reasonably necessary to preserve others. Further,

> "A man, as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the *law of nature gave him for the preservation of himself, and the rest of mankind*." (Locke II, 135, emphasis added)

Again, the law of nature gives the power of the preservation of self as well as the "rest of mankind." Locke then writes that no human law is valid that contradicts natural law or the fundamental law of nature—the preservation mankind as a whole. "[A]nd the *fundamental law of nature being the preservation of mankind*, no human sanction can be good, or valid against it" (Locke II, 135, emphasis added).

Tully (1980) also uses this reference to recognize the importance Locke places on the common good. Government is bound by natural law to promote the common good. This guarantees for all members of society a comfortable subsistence and the ability to enjoy the fruits of their labour:

> "Locke describes the natural end of political society as the public good: 'Their power in the utmost Bounds of it is limited to the public good of the society. It is a power, that hath no other end but preservation' [Locke II, 135]. Common good, good of society or community and good of the public are various synonyms he uses to describe the purpose for which a common wealth is instituted."[543]

[543] Tully, (1980), 162-163 and 166-169.

Tully also says that for Locke, the morality of self-interest without a corresponding duty is absurd because it is based "in men's appetites and natural instincts rather than in the binding force of law."[544] He claims that a property theory based solely on self-interest is doomed to create conflicts: "[I]f the private interest of each person is the basis of that law (natural law), the law will inevitably be broken, because it is impossible to have regard for the interest of all at one and the same time."[545]

Shrader-Frechette (1993) points out an erroneous argument as well: "To argue that Locke sanctions unlimited accumulation without concern for the needs of other persons, thus *denies what is explicit in Locke*. He claims that 'the end of government is the *preservation of all*' [Locke, II, 159, emphasis added] and that 'the *Law of Nature* stands as an *Eternal Rule*'." (emphasis added)[546] I join this and argue that it is error to ignore Locke's repeated references to the obligation to respect others above the self. Locke's references to his state of nature notes this obligation as well as his concern for the common good after the creation of society.

Locke repeatedly emphasises "the preservation of himself, and the rest of mankind. … being the *preservation of all of his society, that is, all mankind in general*" (Locke II, 171, emphasis added).[547] The preservation of both self and society is required. All mankind in general is to be preserved.

Dunn (1984) emphasises Locke's concern for the public good.[548] Dunn (1969) also claims that for Locke, self-preservation is not sufficient. "Locke did continue to take seriously the problem of preserving rationality for the lives of all men. It was because *self-preservation was in Locke's eyes so grossly inadequate* as a continuing human end that he could not abandon the majority of mankind."[549]

Ashcraft (1986) is also certain that Locke places labour above self-preservation. It is the same action that adds value in the moral "collective sense" to the "benefit of life" or the "common good."[550] Labouring for the common good contributes to the individual and ensures no individual is harmed. Locke's notion of labour as the "fulfillment of God's intentions not only contributes to the common good, but it does no particular injury to any other individual."[551] Ashcraft also points out that labour must be limited to the advancement of the public good—the "obligation of doing something" to carry out the precepts of "the law of God" to labour for the benefit of mankind. So labour is never detached from the advancement of

[544] Tully, (1980), 101-103, 213, 215.
[545] Tully, (1980), 211.
[546] Shrader-Frechette, (1993), 212 (referencing Locke II, 135).
[547] Sec. 171 says; "[S]o as (according to the best of his reason) may most conduce to *the preservation of himself, and the rest of mankind*. So that *the end and measure of this power*, when in every man's hands in the state of nature, being the *preservation of all of his society, that is, all mankind in general*, it can have no other end or measure, when in the hands of the magistrate, *but to preserve the members of that society in their lives, liberties, and possessions; and so cannot be an absolute, arbitrary power over their lives and fortunes, which are as much as possible to be preserved;* but a power to make laws, and annex such penalties to them, as may tend to the preservation of the whole, by cutting off those parts, and those only, which are so corrupt, that they threaten the sound and healthy, without which no severity is lawful. And this power has its original only from compact and agreement, and the mutual consent of those who make up the community." (Locke II, 171, emphasis added). The preservation not only of self but of all society is required.
[548] Dunn, (1984), 52.
[549] Dunn, (1969), 260 (emphasis added).
[550] Ashcraft, (1986), 268.
[551] Ibid. p. 264–265.

the public good.[552] Ashcraft also discusses Locke's concept of labour, and how it "fulfil[s] the divine injunction given to all individuals to labor—and to *labor*, moreover, *for the common good*." He cites Locke's correspondence, which notes that "*everyone*, according to what way providence has placed him in, is *bound to labor for the public good*, as far as he is able, or else he has no right to eat."[553] This is another demonstration of Locke's view that each has a duty to the rest of mankind. Everyone's duty is to labour in accordance with his own capacities, for the public good.

These references may be relevant later, but they are unnecessary here. The *Second Treatise* itself cannot be read properly without nothing the clear repetition of the obligation to preserve others: "*[W]hen his own preservation comes not in competition*, ought he, *as much as he can, to preserve the rest of mankind*" (Locke II, 6, emphasis added. See also Locke II, 11, 129, 135, 159, 171 references after the creation of society).

Ashcraft uses Tyrrell to support his argument: "All the laws of Nature, or Reason…are intended for one end of effect, viz, the *common good and preservation of mankind*."[554] Yet again, there seems to be no reason to cite anyone other than Locke himself on this point. Ashcraft also agrees that the law of nature is directed towards the preservation of mankind. Ashcraft recognizes that labour for the good of the whole is a naïve way to see human motivation. Locke is "not interested in individual motivations"; rather, it is the motivation for the good of the common or the "moral and social" uses of labour:[555]

> "[A]n individual would have the benefit of mankind in mind as the outcome of his enclosure and cultivation of land can, at best, be said to be *rather naïve reading of human motivations. But Locke is plainly not interested in individual motivations for property development; rather, what concern him are the moral and social uses to which property (and labor) can be put.*"[556]

I join Ashcraft against Macpherson, Strauss, and their followers in saying they contradict Locke's own references of concern and obligation to preserve others and reverse his words, saying he argues for self-interests only. Locke's clear intention for the common good can also be seen from Ashcraft interpretation of Locke's state of nature,[557] his use of money,[558] and his view on the waste of land. [559]

Another modern and important corroboration is Simmons's (1989) comparison of Locke's state of nature to that of Hobbes's.[560] As seen above,[561] Locke's state of nature is very

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[552] Ashcraft, (1986), 270.
[553] Ashcraft, (1986), 268, emphasis added, citing Locke's, (1690-1698), *Letter to William Molyneux*, 332.
[554] Emphasis added. Tyrrell, (1681), *Patriacha non Monarcha*, 15 (LL 2999), cited in Ashcraft, (1986), 264-265.
[555] Ashcraft, (1986), 266.
[556] Ashcraft, (1986), 266, emphasis added. Ashcraft, (1986), adds that those who have much fortune are not liberated from the obligation of the natural law to labour for the "benefit of mankind"; "[t]hose who inherit 'a plentiful fortune' may be 'excused from having a particular calling in order to their subsistence in this life but they are *not excused from being 'under an obligation of doing something*' in order to carry out the precepts of '*the law of God' to labor for the benefit of mankind*.'" Ashcraft, (1986), 270, emphasis added.
[557] See references to Ashcraft's state of nature on p. 87.
[558] See references to Ashcraft's use of money on p. 40.
[559] See references to Ashcraft's waste of land on p. 222.
[560] See p. 73.
[561] See the moral state of nature on p. 77.

different from that of Hobbes and his followers. In Hobbes's state of nature, humans are driven only by self-motives and needs. Locke argues that humans have natural rights and obligations (the moral state of nature) for the good of others. Modern authors agree that in comparison to Hobbes, Locke's state of nature has valid legal claims and obligations.[562] I join Simmons's conclusion that Hobbes and Locke differ in various ways. Mainly, Locke presents a somehow more "moral" picture of the state of nature, including individuals with "*full-blown moral rights and obligation.*"[563] His words make this clear (Locke II, 6, 128, 7).[564]

It is clear that Locke suggested more than mere self-preservation, obliging men, if not in conflict, to preserve all mankind (Locke II 6, 134, 182). Locke's *Second Treatise* is based on the concern for the common good within the state of nature and under the government and focuses on the limitations of the natural law, its purpose, the duty of charity, and a sincere love for others.

According to Locke II, 145, one is to treat the "rest of mankind" (repeated twice) as one body.[565] For Locke, the law of nature provides safety, peace, better preservation, and mutual security of mankind "in general." The law of nature is a law for mankind as one community or as a "whole species."[566] Locke writes that the bounds of natural law are there to guarantee that no one is harmed so that all humankind is preserved. Mankind is again described as one community "distinct from all other creatures" (Locke II, 128).[567]

Another example of Locke's concern for the general good[568] and the law of reason's purpose is in his words on the "general good" of humanity, or "those under that law"; "prescribes no farther than is for the *general good of those under that law*" (Locke II Sec. 57, emphasis added).[569] Locke demonstrates again and again that he is motivated by the common good and preservation of the whole.

I join Ashcraft's conclusion that

> "to suggest that Locke ever sets men free from their natural law obligations such that *wealth may be accumulated solely because individuals desire to do so and without any social constraints* on its employments *is to reserve completely the thrust of his argument in the Second Treatise, not to mention the political rational … claim to represent the common good against the arbitrary self-interest of an individual*."[570]

Locke's concern for morality is further demonstrated in the role he gives governments and how he clearly limits their arbitrary power so as to protect and preserve individual rights to life, liberty, and possessions.

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[562] Simmons, (1989), 465; Kilcullen, (1983), 328.
[563] Simmons, (1989), 465.
[564] See an additional modern view on Locke's morality and a possible peaceful state with moral obligations on p. 73, p. 79, p. 82, and following. The modern debate is discussed in the chapters on reason and limits.
[565] See more detail on p. 99.
[566] Analysed on p. 99.
[567] Analysed on p. 99.
[568] See citation on p. 64.
[569] In the state of nature, concern for the good of others exists in Locke's explanation that no one can invade the share of others or "ingross" anything "to the prejudice of others" (Locke II, 31); "whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy... and ingross it to the *prejudice of others*; especially keeping within the bounds, set by reason" (Locke II, 31, emphasis added). The share of others cannot be destroyed.
[570] Emphasis added. Ashcraft, (1986), 266.

3.4.2.2 Preservation of others within governments

Macpherson (1962), Strauss (1953), and their followers interpret Locke's text as a "defense of expanding property rather than the rights of the individual against the state."[571] Strauss (1953) adds that for Locke, the first aim of the government is the protection of the "different and unequal faculties of acquiring property."[572] Macpherson's interpretation makes Locke a defender of the preservation of the self. Macpherson explains that Locke sees "an emerging capitalist society, (which) does not exclude but on the contrary demands the supremacy of the state over the individual."[573] He explains that for Locke, the transfer of individual rights to the limitless power of the state is a requirement and that owners of property "do not need to reserve any rights as against civil society, since civil society is constructed by and for them, and run by and for them."[574] Macpherson then concludes that the state is governed by property owners for the benefit of other property owners, which justifies a society divided by class.[575] To further support his argument, Macpherson points to Locke's examples of limitations on government in the interest of property. This for him demonstrates the first priority of material property in Locke's eyes.[576] But Locke's definition of property tells a different story.[577] Locke clearly referred to the protection of property in the wider sense, including person and liberties.

Locke says in a confusing passage that government cannot take liberties or property without consent because its purpose is the preservation of property: "Thirdly, The supreme power cannot take from any man any part of his property *without his own consent: for the preservation of property being the end of government . . .*" (Locke II, 138, emphasis added). Another confusing reference is the comment on "the *end of government itself,* which is *the public good and preservation of property*" (Locke II, 239, emphasis added).

The government is to preserve property in the wider sense—including life, liberties, health, and possessions (Locke II, 6) for the public good. It cannot refer only to material possessions. "By property I must be understood here, as in other places, to mean that *property which men have in their persons* as well as *goods*" (Locke II, 173, emphasis added).[578] More clearly, Locke defines property as "*Lives, Liberties* and *Estates*…that *I call* by the *general name, property*" (Locke II, 123, emphasis added).[579]

Locke is very clear that there can be no arbitrary power exercised over an individual's right to life, liberty, and possessions. Those rights of property in the wide sense are to be protected and preserved by the government as much as possible. This is clearly demonstrated further by another of Locke's passages:

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[571] Macpherson, (1962), 257, 261.
[572] Strauss, (1953), 245, 247. For a detailed discussion, see Mansfield, (1993), Ch. 24, 148, 185, 189, 191, 200, 201-203, 205-206, 209; see also 186-192, 211, 220, 237, 258-259, 261, 288.
[573] Macpherson, (1962), 256.
[574] Macpherson, (1962), 256.
[575] Macpherson, (1962), 261. For other followers, see Lord, (2003), 70-72; Fukuyama, (1992), 158, 203. Hampsher-Monk, (1992), 104 and Gwyn, (1965), 78. See more on the divided society on p. 125.
[576] Macpherson, (1962), 195.
[577] See the analysis of Locke's property definition on p. 118 and following.
[578] See also Locke II, 27, 30, 31.
[579] "By property I must be understood here, as in other places, to mean that *property which men have in their persons* as well as *goods*" (Locke II, 173, emphasis added).

> "[T]he end and measure of this power, when in every man's hands in the state of nature, *being the preservation of all of his society, that is, all mankind in general,* it can have no other end or measure, when in the hands of the magistrate, but to *preserve the members of that society in their* ***lives, liberties, and possessions****; and so* ***cannot be an absolute, arbitrary power over their lives and fortunes, which are as much as possible to be preserved.***" (Locke II, 171, emphasis added)[580]

Tully (1980) cites Locke's *Letter Concerning Toleration*: "*calls the public good the 'civil interest'* consisting in *'life, liberty, health and indolency of body; and the possession of outward things, such as money, lands houses, furniture and the like.*"[581] To claim Locke's property included only material goods contradicts Locke, who defines it widely enough to cover life, liberties, and possessions.

Against the traditional line of interpretation, I also argue that it is impossible to read Locke's *Second Treatise* without noticing the priority given to the limitations on the state in favour of individual rights. Locke demonstrates concern for the protection of individuals from the arbitrary power of the state; he clearly limits its power for the public good.

Locke's words demonstrate repeatedly that the aim of a good government must be the promotion of the common good and "the *preservation of the* ***society****, and (as far as will consist with the public good) of* ***every person in it***" (Locke II, 134, emphasis added). Locke says that the first and most fundamental law of nature is the preservation of society. He recognizes the need to preserve the good of "every person in it": "THE great end of men's entering into society, being the enjoyment of their properties in peace and safety, … as the first and fundamental natural law, which is to govern even the legislative itself, is the *preservation of the* ***society****, and (as far as will consist with the public good) of* ***every person in it***" (Locke II, 134, emphasis added).

Moreover, "*[t]hat as much as may be,* ***all the members of the society are to be preserved****... for the end of government* being the *preservation of all, as much as may be,* ***even the guilty*** *are to be spared,* where it can *prove no prejudice to the innocent*…." (Locke II, 159, emphasis added). All members of society are to be preserved by the government "as much as may be." Locke clearly states that even the guilty members of society who have harmed others are to be preserved as long as there is no injustice to the innocent members.

Locke further writes, "the executor of the laws having the power in his hands, *has by the common law of nature a right to make use of it for the* ***good of the society***, … the executive power in his hands, *to be ordered by him as the* ***public good*** *and advantage shall require*" (Locke II, 159, emphasis added).

I support Ashcraft (1986) who notes, "For Locke, *Laboring activity, in other words, is never detached from its conjunction with the advancement of the public good*" (emphasis added, citing Locke's discussion in his Journal (1677)).[582] Ashcraft clearly states that Locke intended more than the motivation of the self. For Ashcraft, Locke's labour must always be allied to the advancement of the public good: the "commandment to till the earth was a divine injunction' …God intentions, man was commanded 'to subdue the earth' in order to '*improve*

[580] See full citation on p. 102.
[581] Emphasis added. Tully, (1980), 162-163 and 166-169, citing Locke, (1685), *Letter Concerning Toleration*, 15.
[582] Ashcraft, (1986), 270.

it for the benefit of life, and therein lay out something upon it that was his own, his labor." In Locke's view, God had a broader purpose in mind than simply providing for individual self-preservation; rather, *individual labour contributes to the improvement and benefit of life, taken in a collective sense*. Again, this should not surprise us, for *Locke's view of natural law is that it is designated to provide for the common good* and the *benefit of mankind*, and that it is given as a standard to individuals who exist as part of a "natural community."[583]

Ashcraft does not need to search far for Locke's references to a fundamental concern for the public good. The *Second Treatise* is filled with them. "Political power, …right of making laws … for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the *defense of the common-wealth* from foreign injury; and *all this only for the* ***public good***" (Locke II, 3, emphasis added). Legislative power must work towards the common good: "the legislative thereof, to make laws for him, as *the* ***public good of the society*** *shall require*; to the execution whereof, his own assistance (as to his own decrees) is due" (Locke II, 89, emphasis added).

Locke explains that governments must be restrained and limited to avoid an abuse of power: "[M]en found it necessary to examine more carefully the original and *rights of government;* and to find out ways to restrain the exorbitances, and prevent the abuses of that power, *which they having entrusted in another's hands* ***only for their own good****, they found was made use of to hurt them*" (Locke II, 111, emphasis added).

Locke goes further to explain that mankind only created societies for the better protection of natural rights under the natural law. Governments are to give more security and protection than are found in a liberated yet unsafe state of nature. The purpose of society is the amelioration and protection of natural law. No rational being can be expected to decrease his liberties and freedoms except to receive the amelioration of its natural conditions. Locke the reminds us that legislative powers must imitate the natural law for safety, peace, and the public good. Government can never act beyond working for the common good.

> "But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being only with *an intention in every one the better to preserve himself, his liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society, or legislative constituted by them, can never be supposed to* ***extend farther, than the common good***; but is obliged to secure every one's property, by providing against those three defects above mentioned, that made the state of nature so unsafe and uneasy. *And so whoever has the legislative or supreme power of any common-wealth, is bound to govern by established standing laws, … And all this to be directed to* ***no other end, but the peace, safety, and public good of the people***." (Locke II, 131, emphasis added)

The aim of the government is the protection of natural rights and obligations—including people's property in the wider sense (including persons and liberties). No one hands over natural rights without the promise of amelioration of the protection of rights. The public good and preservation of all are emphasised:

> "It is not, nor can possibly be absolutely arbitrary over the lives and fortunes of the people: *… for nobody can transfer to another more power than he has in himself; and*

[583] Emphasis added. Ashcraft, (1986), 264-265. See also Ashcraft's references to the state of nature.

> *nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another*. …but *only so much* as *the law of nature gave him for the* ***preservation of himself, and the rest of mankind***; … so that the legislative can have no more than this. *Their power, in the utmost bounds of it, is limited to the* ***public good of the society***. It is a power that hath no other end but preservation, and therefore can never* have a right to destroy, enslave, or designedly to impoverish the subjects." (Locke II, 135, emphasis added)

The power of rulers is to be limited to the public good of society. This power has no other end but preservation; it can never destroy, enslave, or harm preservation. No human law can be above the fundamental law of nature that promotes the preservation of all mankind. The purpose of society must be for the common good; otherwise, it is not a perfect society:

> "[The] law of a commonweal, … as *the common good requireth. … averse from all obedience to the sacred laws of his nature;* in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions, *that they be no hindrance unto the* ***common good****, for which societies are instituted. Unless they do this, they* ***are not perfect.*** *Hooker's Eccl. Pol. l. i. sect. 10.*" (Locke II, 135, emphasis added)

Locke emphasises again that government power exists only for the "good of the society," for

> "all the power the government has, *being only for the* ***good of the society***, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws; that *both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds*, and not be tempted, by the power they have in their hands, to employ it to such purposes, and by such measures, as they would not have known, and own not willingly." (Locke II, 137, , emphasis added)

Government laws exist only to promote the ultimate good of the people: "Secondly, These laws also ought to be designed for *no other end ultimately*, but *the* ***good of the people***…" (Locke II, 142, emphasis added). Here too, Locke insists on wise management for the public good and for the advantage of the commonwealth: "so must necessarily *be left to the prudence and wisdom of those*, whose hands it is in, to be *managed for the* ***public good***: …who have this power committed to them, to be managed by the best of their skill, *for the* ***advantage of the common-wealth***" (Locke II, 147, emphasis added).

Locke states that the "duty of the magistrate" is first to "preserve men in the possession of what honest industry has already acquired, and also of *preserving their liberty and strength*" (Locke I, 152, emphasis added). A government not following this might justify resistance. "[T]he state of public affairs, might make use of this prerogative for the *public good*" (Locke II, 156, emphasis added). "[T]o provide for the *public good*, in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct; whatsoever shall be done manifestly for the ***good of the people***…?" (Locke II, 158, emphasis added).

Weak rulers are those who use their power to their own ends and not for public good: "But when mistake or flattery prevailed with weak princes to make use of this power for private ends of their own, and *not for the public good*, …the wisdom of those princes who made no other but a right use of it, that is, *for the* ***good of their people***" (Locke II, 162, emphasis added).

The government cannot promote a separate interest from that of the community it represents.

> "[T]hat that power which they indefinitely left in his or his ancestors hands, *to be exercised for their good*, was not a thing which they intended him when he used it otherwise: *for the* ***end of government*** *being the* ***good of the community***, whatsoever alterations are made in it, tending to that end, cannot be an encroachment upon any body, since *no body in government can have a right tending to any other end*: and those only are encroachments which prejudice *or* ***hinder the public good***. Those who say otherwise, speak as if the prince had a distinct and *separate interest from the good of the community*, and was not made for it; the root and source from which spring almost all those evils and disorders which happen in kingly governments. And indeed, if that be so, the people under his government *are not a society of rational creatures, entered into a community for their mutual good;* they are not such as have set rulers over themselves, to guard, and promote that good; but are to be looked on as an herd of inferior creatures under the dominion of a master, who keeps them and works them for his own pleasure or profit." (Locke II, 163, emphasis added)

A good ruler must care for the good of the people:

> "But *since a rational creature cannot be supposed, when free, to put himself into subjection to another, for his own harm;* (though, where he finds a good and wise ruler, he may not perhaps think it either necessary or useful to set precise bounds to his power in all things) prerogative can be nothing but the people's permitting their rulers to do several things, of their own free choice, where the law was silent, and sometimes too against the direct letter of the law, for the *public good*; and their acquiescing in it when so done: for as a ***good prince***, *who is mindful of the trust put into his hands, and* ***careful of the good of his people***, cannot have too much prerogative, that is, power to do good; so a weak and ill prince, who would claim that power which his predecessors exercised without the direction of the …." (Locke II, 164, emphasis added)

For Locke, the foundation and end of all laws must be the public good: No government is valid if it acts on self-interests without concern for the "*foundation and* ***end of all laws, the public good***" (Locke II, 165, emphasis added). Rulers are also to be bound by the limitations of the common good. Prerogative is a right to act only for the public good:

> "Such god-like princes indeed had some title to arbitrary power by that argument, that would prove absolute monarchy the best government, as that which God himself governs the universe by; because such kings partake of his wisdom and goodness. … those good rulers into precedent, and make them the standard of their prerogative, as if what had been done ***only for the good of the people*** was a right in them to do, for the harm of the people, if they so pleased; … those *kings, or rulers, who themselves transgressed not the bounds of the public good: for prerogative is* ***nothing but the power of doing public good without a rule***." (Locke II, 166, emphasis added)

"The power of calling parliaments …with this trust, that it shall be made use of ***for the good of the nation***, as the …as might be *most subservient to the public good*, and best suit the ends of parliaments" (Locke II, 167, emphasis added). A good governor is to watch for the good of the people and their preservation: "it being as impossible for a governor, if he really means the *good of his people and the preservation of them*, and their laws together" (Locke II, 209, emphasis added).

> "The ***end of government*** *is the* ***good of mankind****; and which is best for mankind*, that

> the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the properties of their people?" (Locke II, 229, emphasis added)

The end of a government is the public good or the "good of mankind." Locke often demonstrates that the natural law seeks the safe and peaceful preservation of mankind as a whole.

Dunn (1984) also emphasises that a government is only valid if it acts for the public good: "*[R]oyal prerogative could and should be exercised for the public good.*"[584] "If public good is not within the government intention the people could "*fuse the right of individual revenge and the responsibility for re-creating political order.*" "*[T]he remedy for a betrayal of trust was the right of revolution*."[585] For Dunn, it is clear that Locke "*set human good intentions above constitutional rigour*."[586]

All the above-mentioned references demonstrate Locke's principal concern for the preservation of mankind as a whole, as one community. For Locke, it is the purpose of the natural law to preserve this whole community. However, Locke emphasises that it is not just the preservation of the whole but of members' life, liberty, and possessions. Governments are to preserve the rights of the common good and individuals (Locke II, 134, 182, 131, 135).

3.4.3 Persons included in this definition of "others"

The preservation of all mankind, "as much as possible" (Locke II, 16) and "every person in it" (Locke II, 134) is "a fundamental law of nature" (Locke II, 16). To Locke, "as much as may be, *all the members of the society* are to be preserved" (Locke II, 159, emphasis added. See also Locke II, 182). Further, we have seen that for Locke, "even the guilty are to be spared, where it can prove no prejudice to the innocent…." (Locke II, 159). However, in case of a conflict, the innocent and those who have not harmed anyone are to be preserved: "[W]hen all cannot be preserved, the safety of the innocent is to be preferred" (Locke II, 16, emphasis added).

Further on, Locke is more specific and says that all mankind are to be preserved while "cutting off" the corrupted ones who threaten the safety of the whole. "[B]eing the *preservation of all of his society*, that is, *all mankind in general"*…"to the *preservation of the whole*, but *cutting off those parts*, and those only, which are *so corrupt that they threaten the sound and healthy* , without which no severity is lawful" (Locke II, 171, emphasis added).[587]

For Locke, all mankind is to be preserved unless a person is so corrupt that he or she poses a danger to society. The preservation of the innocent and defenceless is preferred. Kilcullen (1983) adds an interesting comment that when it comes to "others": Some traditional interpreters of Locke add words such as "at least" or "only" to Locke's text. For example, Cox (1960) adds the word "only": "A man is bound to preserve the rest of mankind as much as he can, but only where his own preservation comes not in competition."[588]

In the *Second Treatise*, self-preservation is always linked to the preservation of the rest of

[584] Dunn, (1984), 51, emphasis added.
[585] Dunn, (1984), 54, 56, emphasis added.
[586] Dunn, (1984), 51, emphasis added.
[587] See references on p. 62.
[588] Kilcullen, (1983), 327, citing Cox, (1960), 83.

mankind. To Locke, the preservation of mankind is the purpose of the law of nature. "[T]he law of nature…willeth the peace and preservation of all mankind" (Locke II, 7). Locke explains that "the fundamental law of nature" is "the preservation of mankind" (e.g., Locke II, 16, 134, 135). It is clear thus that when Locke refers to "others" he means the rest of mankind as a whole and each person in it. Locke gives preference to innocent and uncorrupted individuals who have not harmed anyone.

3.4.4 Corroboration from natural law and morality: Grotius and Pufendorf

The common good and contribution to the whole is observed in Grotius (1625): "Right, strictly taken, is again twofold, the one private, establishing *for the advantage of each individual*, the other, superior, as involving the claims, which the state has upon individuals, and their property, *for the public good*" (emphasis added).[589] He further states, "Right, which has the same meaning as Law, taken in its most extensive sense, to *denote a rule of moral action, obliging us to do what is proper*" (emphasis added).[590] Right thus entails the moral obligation to do what is just. Further,

> "First, *Individual citizens should not only refrain from injuring other citizens, but should furthermore protect them, both as a whole and as individuals;* secondly, Citizens should not only refrain from seizing one another's possessions, whether these be held privately or in common, but should furthermore *contribute individually both that which is necessary to other individuals and that which is necessary to the whole.*" (emphasis added)[591]

Like Locke, Grotius's state of nature calls for valid legal claims and obligations with respect to the whole.[592] Right entails a moral obligation to respect the same rights of others.[593] Reason for Grotius is that which is just: "*what is just, the dikaion, the iustum,* while what is not-right or unjust is against reason."

> "RIGHT is that, which is not unjust. *Now anything is unjust, which is repugnant to the nature of society, established among rational creatures*. Thus for instance, *to deprive another of what belongs to him, merely for one's own advantage, is repugnant to the law of nature, as Cicero observes* in the fifth Chapter of his third book of offices; and, *by way of proof, he says that, if the practice were general, all society and intercourse among men must be overturned . . . as all the members of the human body agree among themselves, because the preservation of each conduces to the welfare of the whole, so men should forbear from mutual injuries, as they were born for society, which cannot subsist unless all the parts of it are defended by mutual forbearance and good will*."[594]

Grotius explains that what is unjust is repugnant to reason. Grotius cites Cicero to show that if all respect the property of others, society would change. Grotius also cites Seneca in that all members of humanity must avoid mutual injury because the preservation of each helps the welfare of the whole. Grotius also insists that the love for others benefits the individual: "And

[589] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 5, Para.1.
[590] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 9, Para. 1.
[591] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11, Para. 2
[592] These claims differ from Hobbes's natural freedom. See Hohfeld, (1946), 36. See Straumann, (2006), 338.
[593] See also equality, p. 80.
[594] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 3, Para. 1, emphasis added.

so these laws have regard to the common good, but not in the sense of the common good of diverse individuals, as with the laws of the previous order, but in the sense of the *common good of one body, and thus of their own*" (emphasis added).[595]

For Grotius, the love of others is most strongly evident in humans, having the capacity to reason, or, the capacity to act beyond the search for basic immediate pleasure—for the benefit of the common good.[596] Further, for Grotius, right reason guides natural law and morality. "The dictate of right reason, showing the *moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature*…"[597] Again, the connection between right reason and morality is clear. For Grotius, right reason demonstrates moral necessity in agreement with a rational nature.

Natural law in classical literature seeks the preservation of mankind as a whole. It grants individual absolute rights with correlating limitations so that no one is harmed. It calls for the preservation of the creation as a whole as it belongs to the common good.[598] Modern authors confirm Grotius's view. For example, Brett (2002) notes that

> "[i]n the De iure praedae, *self-love is coupled with a consequent other-love*, and these 'loves', which are said to be 'twin', ground both human society and civil society. There is no discontinuity in motivation between the isolated unit, the unity of human society, and the unity of civil society. All operate on the principle that in nature, what is most one, is best, a principle that involves both self-love and other-love. Unity, yielding mutuality, lies at the base of the political theory of the De iure praedae." (emphasis added)[599]

Acting for the common good is a basic element of Grotius's natural law; an individual not doing so is in the wrong.

Straumann (2006) adds that "Grotius argues that *acting solely in the pursuit of self-interest is not only morally but also legally wrong in the state of nature*."[600] "Unlike Hobbes, *Grotius designed this state of nature with an overall pattern of well-developed legal rights and duties.*"[601] This is similar to Locke, who also sees the state of nature as a well-developed and organized system of rights and obligations.

Murphy (1982) follows Grotius: "The dictates of right reason expressed the moral sense of rational human nature and indicated the presence of moral turpitude or the necessity of action."[602] Further "(Reason) created obligations and conferred permissions within the limits of reason."[603] Grotius and Locke both posit that natural law entails an obligation to others. Modern interpreters of Grotius find the possibility of an ideal order in a moral world. This is

[595] See Grotius (1868 ed.), *De iure*, cited in Brett, (2002), 46.
[596] Taken from Brett, (2002), 40-48.
[597] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10, Para. 1. emphasis added.
[598] Additional references to Grotius's morality begin on p. 165.
[599] Brett, (2002), 48.
[600] See Straumann, (2006), 337, emphasis added.
[601] Straumann, (2006), 337-338, emphasis added.
[602] See references in Murphy, (1982), 480, emphasis added.
[603] Murphy, (1982), 481, emphasis added, citing Grotius, (1625), *War and Peace*, Bk. I, Ch.1, Sec. 15.

also similar to Locke's peaceful state of nature (possible in a society of reasonable people).

For Pufendorf, natural law precepts go beyond caring for self-interests. They include the fundamental obligations of respecting the liberty and possessions of others. This promotes spontaneously the interest and happiness of the common good, as long as no other superior obligations intervenes.[604] For Pufendorf, due to the *"summa imbecillitas atque naturalis indigentia"* of men, an individual is obligated to associate with others and sincerely admits the common good to be his own good.[605] Pufendorf says that "action[s] directing to the mutual sociableness are commanded by the law of nature while those detrimental to it are forbidden" (emphasis added).[606] Reason thus includes actions directing towards mutual "sociableness." I argue that Locke implies a similar application of morality within reason. And in Pufendorf's words,

> "And so it will be a fundamental law of nature, that 'Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude, which is peaceful and agreeable at all times to the nature and end of the human race.' . . . [B]y a sociable attitude we mean an attitude of each man towards every other man, by which each is understood to be *bound to the other by kindness, peace, and love, and therefore by a mutual obligation.*" (emphasis added)[607]

Locke focused on more than self-interest alone. His influences support the preservation of the good of others as well. It is a mutual obligation to avoid injuring each other for the good of the whole. This widespread concern for others above the self was not a new concept to natural law fathers.

3.4.5 Other sources of Locke's common good and sincere love for others

Locke's concern for the common good can also be demonstrated by his writing on education[608]: "the preservation of all mankind" is "the true principle to regulate our religion, politics and morality" (Locke, *Education*, 116). Locke defines "Good breeding" as the most important achievement of moral education. The man of good breeding is valued via the happiness he gives to others. In the same process, in the long run, he also secures his own happiness. Men of good breeding "love and respect other people" and have "the true art of living in this world, and being both welcome and valued everywhere."[609] Well-bred individuals who gain pleasure from giving others pleasure have thus the highest of esteem in the eyes of society. They take genuine pleasure in pleasing others and as such, may delight in conversations and what Locke calls "social intercourse."[610]

Locke goes as far as saying civility is not just a negative forbearance of no harm but a positive

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[604] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 2, Cap. 11

[605] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 14. See also Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 15: "*Cuilibet homini, quantum in se, colendam et conservandam esse pacificam adversos alios socialitatem, indoli et scopo generis humani in universum congruentem.*"

[606] Pufendorf, (1672), *De iure Naturae* , Vol. II, Lib. 3, Cap. 15: "*Omnia, quae ad istam socialitatem necessario faciunt, iure naturali praecepta, quae eandem turbant aut abrumpunt, vetita intelligi.*"

[607] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 19.

[608] Locke, (1693), *Education*. See entire ref. in bibliography.

[609] Locke (1693), *Education*, Para. 143–145. Locke also emphasises that the child's moral understanding comes principally from the "knowledge of virtue" he has attained "more by practice than rules" (Locke, (1693), *Education*, Para. 185).

[610] Ibid.

"respect and good will to all people"[611] and a "compassionate and gentle" attitude toward others. This is explained by the principle of equality.[612] For Locke, "all men alike are friends of one another and are bound together by common interests."[613] Locke thus considers the "General good will and regard for all people" as an "internal civility of the mind." For Locke, this civility is an important duty.[614]

Locke's concern for the public good is further argued and clearly reflected in the positive law of the Supreme Court of Wisconsin (1906).[615] Forde (2006) confirms this and adds that for Locke, "Civility and the rest of the social virtues are not only compatible with individual happiness but instrumental to it."[616] He points out that the possible confusion here is the moral corollary and its remote application requirements. Another problem is the related tendency towards self-centred assertions of rights to overcome the principle of responsibility to others.[617] Most people prefer their own interests to those of others. But Locke thinks love for others must be sincere.[618]

Locke also explains that the genuine concern for the common good is not entirely natural and must be practiced in order for it to become sincere.[619] Forde (2006) notes, "self-love is an innate principle of action, but the moral restraints on it, in particular equitable treatment of others, must be learned."[620] When genuine, there is no confusion. Giving others pleasure becomes natural, with its practice and re-education, and as such, even superior to self-pleasure.[621] Locke was clear that the purpose must be not only satisfying appetites but working for the good of others.

As part of natural law, rational beings are bound to sincerely admit the common good to be their own good. Locke's concern for morality and the common good can further be understood from his textual references on charity.

3.4.6 Locke on Charity

Locke's focus on charity reflects his general concern for the public good and the importance of morality. "This equality of men by nature, … the *foundation of that obligation to mutual love amongst men, on which he builds the duties they owe one another*, and from whence he derives the *great maxims of justice and charity*" (Locke II, 5, emphasis added). Locke demonstrates that equality[622] is the greatest foundation for love among men and creates a duty of "justice and charity" to others. Locke mentions the need to demand "relief and support to the distressed" (Locke II, 70); "true love of mankind and society, and such charity as we owe

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[611] Locke, (1693), *Education*, Para. 67, 143, Tarcov, (1984), 195.
[612] See p.79.
[613] Locke II, 19.
[614] Locke, (1704), *private correspondence to Damaris Masham*, Sec. 1, 179.
[615] Nunnemacher v. State, N.W. Rep (1906), pp. 628-630. Tully, (1980), 47, finds within another source, Locke, (1695), *Reasonableness of Christianity*, Vol. 6, Para. 142, that Locke clearly holds natural law to be the "foundation of morality" and for the convenience of all: "The *law of nature is the law of convenience* too: it is no wonder, that those men of parts, and studious of virtues…should, by meditation, light on the right, even from the observable convenience and beauty of it; without making out its obligation from the *true principles of the law of nature, and foundation of morality*" (emphasis added).
[616] See also Forde, (2006), 254.
[617] See Forde, (2006), 257.
[618] Locke, (1693), *Education*, Para. 66, 117, 143.
[619] Tarcov, (1984), 138 & footnote 911, p. 165 within this thesis.
[620] Forde, (2006), 246, 250, citing Locke, (1693), *Education*, Para. 33, 45, 200.
[621] Locke, (1693), *Education*, Para. 143–145.
[622] See p. 79.

all to one another" (Locke II, 93).

Macpherson, Cox, Goldwin, Andrew, Cohen, Strauss, and Pangle all conclude that Locke shows no interest in rights and duties arising from charity.[623] Strauss argues that "in his (Locke's) thematic discussion of property he is silent about any duties of charity."[624] But Locke writes that God

> "has given no one of his children such a property in his peculiar portion of the things of this world, but that he has *given his needy brother a right to the surplusage of his goods*; so that it cannot justly be denied him, when his pressing wants call for it…Charity gives every man a title to *so much out of another's plenty as will keep him from extreme want, where he has no means to subsist otherwise*" (Locke I, 42, emphasis added).

Locke thus emphasises that the needy cannot be refused charity if they have no means to subsist otherwise (this includes those who genuinely cannot work for their own support).

Locke's texts demonstrate that his concern to give "relief" to "one in trouble" and to "fe[e]d the hungry." Locke states that it is "a virtue and every particular man's duty" to "relieve with alms the poor."[625] In Locke's "proposal for reform of the Poor Laws," he presupposes a natural right to shelter and food.[626] Locke had a charitable nature himself. Lady Masham reports that Locke was

> "naturally compassionate, and exceedingly charitable to those in want…People who had been industrious, but were, through age or infirmity, past labour, he was very bountiful to; and he used to blame that sparingress with which such were ordinarily relived, 'as if it sufficed only that they should be kept from starving or extreme misery; whereas they had,' he said, 'a right to living comfortably in the world'."[627]

Simmons argues that it is an "odd" reading of Locke that does not find charity. He too demonstrates Locke's insistence on the right and duty of charity.[628] Dunn (1984) adds, "Locke believed that all men had a right to physical subsistence which overrode the property rights of other humans."[629]

I agree that Locke's own texts demonstrate the right to charity. But I do not concur with Tully (1980), who noted, "By failing to hand over the goods, the proprietor invades the share now belonging to the needy."[630] Tully explains that property rights include charity rights mainly because property is for the purpose of preservation. Once this preservation is secured, any further property becomes conditional on the preservation of others.

> "(B)y making charity a natural and positive duty Locke answers Pufendorf's second objection to Grotius's theory. Pufendorf uses the possibility that a man might starve in Grotius' state of nature through exclusion to argue that individuation must be based on a

[623] Macpherson, (1962), 221; Strauss, (1953), 221, 236-239, 242-244; Cox, (1960), 170-171; Pangle, (1988), 143-144, 161, 306-307; Andrew, (1988), 56-65.
[624] Strauss, (1953), 234, 236, 246, 248; see also p. 243.
[625] Locke, (1876 ed), *An Essay Concerning Toleration*, 182, 195, cited in Simmons, (1992), Ch. 6.3.
[626] See "Proposal for Reform of the Poor Laws," p. 382-83.
[627] From Locke, (1704), *private correspondence to Damaris Masham,* Sec. 2, 535-536.
[628] See Simmons, (1992), Ch. 6.3.
[629] Dunn, (1984), 43.
[630] Tully, (1980), 132.

> pact incorporating the duty of charity. *Locke replies that charity is a natural duty which follows from the nature of property in a manner strikingly similar to Aquinas' formulation of charity (Locke II. 66.7). Since a person has a property for the sake of preserving himself and others, once his own preservation is secured, any further use for enjoyment is conditional on the preservation of others(2.6)…*Charity is a right on the party of the needy and a duty on the part of the wealthy." (emphasis added)[631]

I cannot say Locke's charity goes this far that the duty of charity becomes an obligation once self-preservation is secured because Locke's property gives rise also to comfort and convenience and not just self-preservation.[632] I agree with Simmons's (1992) more moderate view on charity. To Locke, property served the purpose of self-government as well, which leads to convenience and comfort. Simmons adds that charity comes from luxury and rarely from comfort: "[T]here is, then, a hierarchy of property claims, descending in strength from needs to comfort to luxuries. Charity's first claim is on the luxuries (surplusage) held by others, and its ultimate limit is the needs of others; the comfort of others is relatively but not absolutely secure from our claims to charity."[633]

I agree with the moderate line of modern authors such as Simmons, Ashcraft, and Dunn in saying that "in short, a substantial right and duty of charity and liberty are affirmed throughout Locke's works."[634] As such, Locke's concern for the good of others is also confirmed from his use of charity.

3.4.7 Locke's public good: from Locke's Natural Law limits

Within the chapter on natural law limits,[635] I demonstrate that for Locke, the role of the natural law limitations derives from Locke's principal concern for the needs of others. Its role is to guarantee that no one is harmed during appropriation. This is so that each individual separately enjoys the same rights and the common of the whole is preserved. The chapter on limits thus provides further corroboration of Locke's concern for the good of others, above the mere needs of the self.

3.4.7.1 Locke's public good: the concept of equality

According to natural law and equality,[636] Locke saw a need to think of the good of others as well as that of the self. Locke demonstrates that the same measurement is to be applied to all creatures of the same rank and species by virtue of their equal capacities. Equality implies that no injury can be done to others because it is self-evident that creatures of the same species and rank, all born to the same conditions of nature, should also be equal in treatment. Harm to others returns to the self. The desire to be appreciated by others of the same species applies the duty to treat others with the same degree of affection.

In Locke's text on education, he writes; "*The preservation of all mankind*" should be

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[631] Tully, (1980), 132.
[632] Property is to be enjoyed for comfort and convenience, p.137.
[633] Simmons, (1992), Ch. 6.3. Further, charity only requires that basic needs are met in exchange for luxury goods (surplusage). In Locke's letter concerning toleration, he emphasises that "uncharitableness" is a "sin" but not "*to be punished by the magistrate*" because it is not "*prejudicial to other men's rights*" nor does it "*break the public peace of societies*", (Locke, (1685), *Letter Concerning Toleration*, 148), cited in Simmons, (1992), Ch. 6.
[634] See Ashcraft, (1986), 272-73 and Locke II, 127.
[635] See p. 210.
[636] See p. 79.

"*everyone's persuasion, as indeed it is everyone's duty*." For Locke, those who defy this have not considered the principle of equality in a serious way (Locke, *Education* pars. 110, 116, 117).[637] Locke's view on equality thus explains his concern for the common good over the mere needs of the self.

3.4.8 Conclusion

Locke's own text demonstrates the principal importance of the preservation of others, morality, and common good. The *Second Treatise* cannot be read properly without seeing the concern for the obligation to preserve others if not in competition with the preservation of the self (Locke II, 6. See also Locke II, 7, 16, 25, 131, 134, 135, 149, 159, 171, 183). Locke was concerned with more than self-preservation, obliging men to preserve others, all mankind, and each person in it (Locke II, 11, 129, 135, 159, 171). Locke repeats many times in the *Second Treatise* (in the state of nature and under the government) that it is not just about self-preservation. The preservation of others as much as possible is also required. Governments are to preserve the rights of the common good and each person within the society (Locke II, 134, 182, 131, 135). Locke also proposed a sincere love for others through the use of charity and explanation of equality. Natural law limits seek to preserve the whole, as Grotius and Pufendorf also assert. Macpherson's and others' insistence that Locke was concerned with self-interests alone is therefore baffling.[638]

In a letter to his friend William Molyneux, Locke (1694) writes, "[E]very one, according to what way providence has placed him in, is *bound to labour for the public good*, as far as he is able, or else he has no right to eat"(emphasis added). [639] For Locke, old age and illness cannot justify "lazy idleness."[640] The labour that is the foundation of property rights must be directed to the common good.

[637] Locke, (1693), *Education*, Para. 110, 116, 117

[638] See within this thesis notes 571, 573, 575, 576. For additional references, see the chapter on limits and preservation of others.

[639] Locke, (1685), *Some Familiar Letts between Mr Locke and several of his Friends*, 296. Cited in Dunn, (1969), 251.

[640] Locke, (1685), *Some Familiar Letts between Mr Locke and several of his Friends*, 296. Cited in Dunn, (1969), 251.

3.5 **Locke's concept of property within the state of nature**

Locke discusses his theory of property in Chapter V of his *Second Treatise of Government*, divided into three main parts: appropriation from common corresponding to the period of the state of nature; his labour theory explaining how within the common, one could still base some limited property rights on natural law without the necessary human consent (analysed in the chapter on labour); and property after the introduction of money corresponding to the period after the formation of societies, whereby absolute property rights depend on human agreements. Here too, as demonstrated under the discussion of tacit consent,[641] consent is not sufficient when the government is does not follow natural law.

3.5.1 Locke's broad definition of property

Like most modern interpreters,[642] I confirm that Locke's definition and use of the word property covers both the broad sense of the term as well as the narrow. Property for Locke has several meanings. The **Narrow sense** implies material objects. Locke uses the following expressions: "material possessions," "goods," "estates," or "units of the conveniences or necessities of life."

The government cannot take liberties or property without consent because its purpose is the preservation of property: "The supreme power cannot take from any man any part of his property *without his own consent: for the preservation of property being the end of government*" (Locke II, 138, emphasis added). Locke also writes of "the *end of government itself,* which is *the public good and preservation of property*" (Locke II, 239, emphasis added).

This material sense appears in the traditional interpretation of Locke by Macpherson and his followers. They hold that Locke was a materialist who sought to remove natural law limits to allow limitless capitalist accumulation of property. Macpherson (1962) interprets Locke's text as a "defense of expanding property."[643] Strauss (1953) adds that for Locke, the first aim of the government is the protection of the "different and unequal faculties of acquiring property."[644] They claim that Locke does not answer the unequal possession of property created after the use of money[645] and demonstrate that Locke provided few examples of limitations on government in the interest of property. They claim material property was of primary importance to Locke.[646]

I argue in this thesis[647] that Locke is aware of the unequal situation and finds the measurement of levels of labour to be fair. Money can enlarge possessions to meet needs of security and comfort above mere preservation, which can lead to unequal possessions. This is natural, and Locke's focus was on a different equality. He clearly focuses on the equal opportunity of self-preservation or self-government and to pursue harmless desires without interference (Locke

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[641] See tacit consent, p. 44.
[642] See e.g., Gough, (1950), 85; Goldwin, (1987), 496; Perry, (1978), 49; Laslett, (1963), 115-117; Macpherson, (1962), 198, 230, 247-250.
[643] Macpherson, (1962), 257, 261.
[644] Strauss, (1953), 245, 247. For a detailed discussion, see Mansfield, (1993), Ch. 24, 148, 185, 189, 191, 200, 201-203, 205-206, 209; see also 186-192, 211, 220, 237, 258-259, 261, 288. For a good refutation of this theory, see Ryan, (1965), 247.
[645] Macpherson, (1962), 211.
[646] Macpherson, (1962), 195. See more references on the modern debate on the inequality of possessions on p. 41.
[647] See the use of money on p. 34 and the modern debate on the inequality of possessions on p. 41.

II, 54). [648]

The references demonstrating the protection of property derive from the aim of the government, which is the preservation of property in the wider sense, including life, liberties, health, and possessions (Locke II, 6) of the public good. It cannot refer only to material possessions, as Locke made clear.

Locke's traditional interpreters place his focus on the importance of property in the narrow sense—mere material possessions: "The *great and chief end, therefore*, of men's uniting into commonwealths, and putting themselves under government, *is the preservation of their property*. To which in the state of nature there are many things wanting" (Locke II, 124, emphasis added). Against this narrow understanding of Locke, I urge a careful reading of Locke's own words.

A review of paragraph 124 and the "great and chief" importance of property preservation requires a reading of paragraph 123, in which Locke asks a simple question. If the state of nature is so free and liberating, what would be the reason for men to "part with this freedom" and '*subject himself to the dominion and control of any other power*?" For Locke, the answer is that the state of nature, as long as it is ruled by a "greater part" of "*no strict observers of equity and justice*," it remains "unsafe" and "very insecure." Forming societies only improves the protection of property rights in the *wider sense*, literally covering *"lives," "liberties," and the "estates"*—property in the **wider sense**. (Locke II, 123, emphasis added)[649]

As a clear indication that paragraph 124 is an answer to the previous question in paragraph 123, I refer the reader to Locke's use of the word "therefore" immediately after "great and chief end" (Locke II, 124). One can see thus that the chief importance of the preservation of property by the government is the answer to the insecurity of the state of nature deriving from the fact that greater part of people within it are not observers of equity and justice. To give away liberties given in the state of nature, men wanted more security for their property rights in the wide sense: "*lives, liberties and estates, which I call by the general name, property*" (Locke II, 123, emphasis added).

It is thus the protection of property in the wide sense that is for Locke the very basis of society formation (see also Locke II, 7, 124). As additional support in the *Second Treatise*, Locke says that no man would join a society and give up important rights and liberties for anything less than the amelioration of his quality of life or property in the wide sense (Locke II, 131).[650] It is on this basis that Macpherson concludes that for Locke, only property owners in material terms are rational, which justifies a society divided by class.

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[648] See the modern debate on the inequality of possessions on p. 41 and equality on p. 79.

[649] "Sec. 123. IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, *why will he part with his freedom?* why will he give up this empire, and subject himself to the dominion and controul of any other power? To which it is *obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others:* for all being kings as much as he, every man his equal, *and the* ***greater part no strict observers of equity and justice***, *the enjoyment of the property he has in this state* ***is very unsafe, very unsecure.*** This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the ***mutual preservation of their lives, liberties and estates, which I call by the general name, property***." (Locke II, 123, emphasis added)

[650] See p. 107.

Locke also discusses the wider sense using the following expressions: "By property I must be understood here, as in other places, to mean that *property* which men have in their *persons* as well as *goods*" (Locke II, 173, emphasis added).[651] It seems clear that for Locke, property represents all that is owned by the person: his right to life, liberties, labour, and bodily movements. Locke's wider use of the word property is supported by most schools of interpretation, opposing Macpherson and his followers.

Tully (1980) notes that "Locke means by 'property' . . . *any sort of right*, the nature of which is that it cannot be taken without a man's consent."[652] He explains that to Locke, property is "'a right to any things" and injustice is "the Invasion or Violation of that right". Therefore, "Where there is no Property, there is no Injustice."[653]

Simmons (1992) agrees and says that most literature on Locke's theory of property is based on his wide definition of property, the moral "right to anything."[654] Simmons demonstrates that for Locke, property is whatever one owns.[655] Most modern interpreters claim Locke uses both a "broad" and a "narrow" meaning of property. This has created much confusion among interpreters.[656]

This 17th- century definition of property includes "that which is proper to a person" (*proprium alicui, suum*) or "that which belongs to somebody," including movements and liberties. Hobbes translates *suum cuique tribuere* to be "property" and states that "those that are dearest to a man are his *own life, and limbs*; …and after them *riches and means of living.*"[657]

Grotius and Pufendorf also define "own" in a wider sense to include "life," liberty," "person," "goods," and "estate." For Grotius, the first things that belong to a person in the state of nature are his *life, limb*, and *liberty*:

> "*For the end of society is to form a common and united aid to preserve to everyone his own.* Which may easily be understood to have obtained, before *what is now called property* was introduced. For the *free use of life and* ***limbs*** was so much *the right of every one*, that it *could not be infringed or attacked without injustice*. So the use of the common productions of nature was the right of the first occupier, and for anyone to rob him of that was manifest injustice."[658]

Grotius says the aim of society is the preservation of property, including life and limb. He emphasises that the "free use" of life and limb is a right of all. Thus, Locke's predecessors also thought property in the wider sense includes life and limb.

Grotius further adds, "God has given life to man, not to destroy, but to preserve it; assigning to him for this purpose a right to the *free enjoyment of personal liberty, reputation, and the*

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[651] See also Locke II, 27, 30, 31.
[652] Emphasis added. Tully, (1980), 115-116. Tully adds that Locke's definition in the Essay serves the same purpose (Locke, IV, III, 18).
[653] Tully, (1980), 104-125. See also p. 115.
[654] Simmons, (1992), 226. For other modern confirmation, see Perry, (1978), 49; Rapaczynski, (1987), 180; Seliger, (1968), 165-166; Tully, (1980), 7, 113-116; Laslett, (1963), 115-116.
[655] See Olivecronna, (1974), *Appropriation in state of nature*, 218-219; (1974) "*Locke's theory of Appropriation*", 222-225; Tully, (1980), 7, 112. See also Simmons, (1992), 226.
[656] Simmons, (1992), 226.
[657]Hobbes, (1651-1668), Ch. 15, 94 and the entire Ch. 30 (emphasis added). The term "propriety" was employed specifically by Hobbes and Filmer to refer to "that which is proper to a person" (*proprium alicui, suum*) or "that which belongs to somebody."
[658] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1, Para 5, emphasis added.

control over his own actions" (emphasis added).[659] Grotius includes in his wide definition reputation and control over actions. This is important because it demonstrates that harm to another person's ability to preserve and govern self without intervention is only possible if that ability is something one owns. Damaging reputation reduces a person's ability to freely preserve and govern self; there is a personal right to freely enjoy what we own. "The objects over which sovereignty may be exercised are of a twofold description, embracing *both persons and things.*"[660] Grotius's *suum* is property in the wide sense. For Grotius, the actions of a person are considered his own in the same sense as life and liberty.[661] Grotius thus gives a wide definition of the *suum*, covering the right to life, liberty, reputation, and actions.

Pufendorf similarly defines the *suum cuique tribuere* to include life, liberty, and estate:

> "[A]ccording to the *Dictates of his Conscience*, it follows from thence, that the *People have as natural and as unquestionable a Right to defend*, their *Lives*, their *Estates*, and *Liberties* against the Attempts of a Tyrant. This Right is even …the strongest of all Obligations, or rather, that which is the Foundation and Source of all others; I mean, the indispensable *Necessity that obliges every Man to follow the Light of his own Conscience.*" (emphasis added)[662]

Pufendorf's terminology is similar to Locke's (see Locke II, 123). This right is even mentioned as the strongest of all obligations of reason. Locke clearly uses the broad meaning of property to include not only estates but also life, liberties, movements, and actions (Locke II, 44, 123, 173, 239). For Locke, every person is the owner of his own property. To better explain the concept of being the proprietor of self, see the analysis of the *suum cuique tribuere* below.

3.5.2 Suum cuique tribuere

Locke explains that the power and liberty one has over person, actions, and labour is the basis of property rights. All have the right to protect and defend this right from the interference of others. It is the "great foundation of property" (Locke II, 44): "[M]an, by being master of himself, and *proprietor of his own person*, and the *actions or labour of it*, had *still in himself* the *great foundation of property*" (Locke II, 44, 239, emphasis added). Man as the owner of himself is the "proprietor" of his person, actions, and labour and has the "great foundation of property." The "state all men are naturally in, and that is, a *state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man*" (Locke II, 4, emphasis added). All have a natural right and power over own person and actions to do as they think fit within the limits of natural law.[663] This ownership of actions and liberties justifies property rights. Locke explains that every man has "a Property in his own Person" (Locke II, 27); "Though the Earth, and all inferior Creatures be common to all Men, yet every *Man has a Property in his own Person. This no Body has any Right to but himself*" (Locke II, 27, emphasis added).

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[659] See Grotius, (1625), *War and Peace*, Bk. II, Ch. 17, Sec. 2, Para. 1: *vita, membra, libertas* were *propria cuique.*

[660] Grotius, (1625), *War and Peace*, Bk. II, Ch. 3, Sec. 2, emphasis added.

[661] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1, Para. 5: *vita, membra, libertas* were *propria cuique*; Bk. II, Ch. 17, Sec. 2, Para. 1.

[662] Pufendorf , (1749), *The law of nature and of nations*, Bk. VII, Ch. 8, Para. 719, note 2.

[663] See p. 210.

No other besides the individual has rights to his person. Man is "absolute Lord of his own Person and Possessions*"* (Locke II, 123). Locke's predecessors concurred. For Grotius (1625), it is a primary law of nature for every person to have his/her own or that which belongs to him: the *suum cuique tribuere.* Grotius's *Suum (meum, nostrum)* is that which "belongs" to a person in the state of nature that he or she is entitled to protect against aggressors.[664] Grotius states, "God has given *life to man, not to destroy, but to preserve it*; assigning to him for this purpose a right to the *free enjoyment of personal liberty, reputation, and the control over his own actions*" (emphasis added).[665] Everyone has a duty to preserve the life given with all that is necessary for that purpose, such as control over actions and liberties. Grotius calls liberty (*libertas*) the power over one's actions (*potéstas in se*). This state of liberty, within each sphere, implies equality among men. Everyone has the right to be free within his own sphere.

> "Civilians call a faculty that *Right, which every man has to his own*; but we shall hereafter, taking it in its strict and proper sense, call it a right. *This right comprehends the power, that we have over ourselves, which is called liberty*, and the power, that we have over others, as that of a father over his children, and of a master over his slaves. *It likewise comprehends property, which is either complete or imperfect; of the latter kind is the use or possession of any thing without the property*." (emphasis added)[666]

For Grotius, everyone has the right to be free within his own sphere. For this state to be preserved and become a collective one, one cannot interfere with the sphere of others. Grotius also states,

> "[F]irst, it shall be *permissible to defend [one's own] life and to shun that which threatens to prove injurious;* secondly, that It shall be *permissible to acquire for oneself, and to retain, those things which are useful for life.* The latter precept, indeed, we shall interpret with Cicero as an admission that each individual may, without violating the precepts of nature, prefer to see acquired for himself rather than for another, that which is important for the conduct of life." (emphasis added)[667]

It is argued that Grotius uses natural and common ideas of observation in children. A child picking a fruit will consider the fruit to be his own. When another child takes it from him, the child will feel the physical loss of the fruit as well as the attack on the person. Adults feel this when an object that "belonged" to them is taken from them.[668] Pufendorf also obliges man to defend this property: "People have as natural and as unquestionable a Right to defend… their Lives, their Estates, and Liberties against the Attempts of a Tyrant."[669] For Pufendorf, the right to property in the wide sense is of first importance, including life and liberties, similar to Locke (see Locke II, 123).

The basic idea is that a man's labour and actions belong to him. Due to this ownership relationship, a man could appropriate as part of his/her "own" other exterior objects just by importing something of himself as his own actions or labour into the object while changing it

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[664] *Alicui proprium esse* ("to be proper" to somebody).

[665] See Grotius, (1625), *War and Peace*, Bk. II, Ch. 17, Sec. 2, Para. 1: *vita, membra, libertas* were *propria cuique.*

[666] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 5, emphasis added. "[E]very man is the governor and arbiter of affairs relative to his own property" (Grotius, (1868 ed.), *De iure*, Bk. I, Ch. 18).

[667] Grotius, (1868 ed.), *De iure*, Bk. II, Ch. 10–11.

[668] See Olivecrona, (1974), *Appropriation in the State of Nature*, 215.

[669] Pufendorf , (1749), *The law of nature and of nations*, Bk. VII, Ch. 8, Para. 719, note 2.

from its original state: "[H]e that so *employed his pains* about any of the *spontaneous products of nature*, as any way to *alter them from the state which nature put them* in, by *placing any of his labour* on them, did *thereby acquire a propriety in them*" (Locke II, 37, emphasis added).[670]

For Locke, exterior objects can be "owned" due to adding value through labour, adding something of him or herself while altering it from its state within nature. Because every man owns his or her own actions and labour, in altering an object from its state of nature, a person annexes or adds something he or she "owns" to the object. This can be considered a service of added value by the labourer, who deserves some benefit from his service.[671]

Pound (1914) confirms that "the social system has defined certain things as belonging to each individual. Justice consists in rendering him these things and in not interfering with his having and using them within the defined limits."[672]

The protection of our ownership is also recognized in a well-known formula of the *Institutes*: "The precepts of right and law are three; "to live honestly, *not to injure another*, and to *give to each one that which belongs to him*."[673] The protection of property in its wider definition is recognized to be the very aim of law and societies. Grotius agrees: "For the end of society is to form a common and united aid to preserve to everyone his own."[674] For Pufendorf the right of property is beyond question.[675] It is thus the same protection of property in the wide sense that is for Locke the very basis of society formation: "*The great and chief end, therefore*, of men's uniting into commonwealths, and putting themselves under government, *is the preservation of their property."* (Locke II, 124 and Locke II, 7, emphasis added).

3.5.2.1 No harm to others

No harm to others is a basic natural law negative inference deriving from the fundamental principle of the *suum cuique tribuere*.[676] The negative inference of the *suum* is to respect others' property in the wide sense. The protection of the "own" in the wider sense also obliges one not to interfere with others' property. Under the law of nature, no injury to others as to their person, liberties, or possessions is allowed. This is the principle of *neminem laedere*. No one may harm others in any way that can damage the ability of self-preservation and self-government (liberty, health, or materials needed for this): "being all equal and independent,

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[670] "The *Fruit, or Venison, which nourishes the wild Indian*, who knows no Inclosure, and is still a Tenant in common, must be *his, and so his, i.e. a part of him, that another can no longer have any right to it*, before it can do him any good for the support of his Life" (Locke II, 26, emphasis added).

[671] See explanation of labour on p. 142.

[672] Pound, (1914), 608.

[673] Emphasis added. Justinian, (533 AD), Bk. 1, Title 1, Sec. 3. Savigny explains, "The first precept, to live honorably, that is, to *preserve moral worth in one's own person, so far as external acts go*, is represented in the legal system by the doctrines as to good faith in transactions, the rules as to illegality of corrupt bargains . . . . The second precept, *not to injure another*, *the respecting of another's personality* as such, is represented by those rules and doctrines that give practical effect to the interest of personality. The third precept, *to render to every one his own*, that is, *to respect the acquired rights of other men*, is represented in the rules and doctrines which secure the interest of substance" (emphasis added) (Savigny, *System des heutigen römischen, Rechts*, I, 407-410), cited in Pound, (1914), 609).

[674] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1, Para. 5. Here, Grotius says the aim of society is the preservation of each member.

[675] Pufendorf, (1672), *De iure Naturae*, Vol. IV, entire Lib. 4. Cited in Pound, (1914), 619.

[676] See p. 121.

no one ought to harm another in his life, health, liberty, or possessions" (Locke II, 6, emphasis added). Further within the same paragraph Locke states that men "may not, unless it be to do justice on an *offender, take away, or impair the life*, or what *tends to the preservation* of the *life, the liberty, health, limb, or goods of another*" (Locke II, 6, emphasis added). Men thus cannot interfere with others' rights if it might harm their preservation in any way: "And that all men may be restrained from invading others rights, and from doing hurt to one another" (Locke II, 7). Locke explains that nobody could "ingross" anything "to the prejudice of others" (Locke II, 31) and insists that it is important not to transgress and injure the *suum cuique* of others (*neminem laedere*). For Locke, man can neither invade others' rights nor cause them harm.

Locke considers it an injury to attack another's property (life, liberty, or possessions). The offender loses natural law protection and puts himself into a state of war; he "declares himself to live by another rule than that of reason" (Locke II, 8).[677] I use Forde (2006) as support. He interprets Locke as such that the consultation of reason demonstrates that all have equal rights, so no one can advance his own interests at the expense of others: "Though I may prefer my preservation when it is threatened, *equity at other times forbids me from pursuing my own good at the expense of others.* What I learn when I *consult reason is that others have as much right as I, which I am bound to respect.*"[678]

For other natural law authors, including Locke's predecessors, the preservation of this basic principle creates a negative inference to avoid interfering with the spheres of others (*alieni abstinentia*).[679] As for Locke, this state of liberty implies equality among men and the respect for the same rights of others. Grotius states that "to deprive another of what belongs to him, merely for one's own advantage, is repugnant to the law of nature,…. *men should forbear from mutual injuries*, as they were born for society, which cannot subsist unless all the parts of it are defended by mutual forbearance and good will" (emphasis added).[680] For Grotius, depriving another of his own violates reason and is repugnant to the law of nature. Men are to avoid harming each other. According to Grotius,

> "Cicero, in the third book of his offices, asks this question, if a wise man, in danger of perishing with hunger, has not a right to take the provisions of another, who is good for nothing? To which he replies; By no means. *For no one's life can be of such importance as to authorize the violation of that general rule of forbearance, by which the peace and safety of every individual are secured*." (emphasis added)[681]

Wisdom asks that man avoid the transgression of harming one another. Grotius further recognizes from Cicero that no one's life can be of such importance as to authorize the violation of this general rule of forbearance, which allows the safe and peaceful preservation of every individual.

Grotius corroborates this with various legal authors and demonstrates that harming others must be avoided even when inconvenient; it is the animals that benefit at the expense of others out of an instinct for self-preservation. But men know the consequences of good and

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[677] See p. 59.

[678] Forde, (2006), 246, 250, emphasis added.

[679] Grotius, (1625), *War and Peace*, Prol. 44: "*iustitia tota in alieni abstinentia posita est*." See also; Bk. I, Ch. 2, Sec. 1, Para. 5; Bk. II, Ch. 17, Sec. 2, Para. 1. Grotius and Pufendorf discuss the *Suum cuique tribuere* above.

[680] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 3 (emphasis added). "*Once it was introduced*," confirms Grotius, "*the law of nature tells me that it is wrong for me seize what is yours against your will.*" Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 21.

[681] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 8.

evil deeds. As such, they must also know the consequences of harming others:

> "*Cicero, in his first book of offices, says, we do not talk of the justice of horses or lions. In conformity to which, Plutarch, in the life of Cato the elder, observes, that we are formed by nature to use law and justice towards men only.* In addition to the above, Lactantius may be cited, who, in his fifth book, says that *in all animals devoid of reason we see a natural bias of self-love for they hurt others to benefit themselves;* because they do not know the evil of doing willful hurt. But it is not so with *man,* who, *possessing the knowledge of good and evil, refrains, even with inconvenience to himself, from doing hurt. …* it is *evident they cannot transgress the bounds of that difference like other animals, without exciting universal abhorrence of their conduct."* (emphasis added)[682]

Grotius even defines justice as avoiding taking that which belongs to others.[683] Interference with life, liberty, actions, or possessions opposes justice. This link between injustice and invading the rights of others is also found in Locke: "Where there is no property there is no injustice."[684] Simmons (1992) confirms and demonstrates that Locke defines injustice as "taking from others, without their consent, what their honest industry has possessed them of."[685] Pufendorf also states that people have a natural right to their "own" life and liberties "*against the Attempts of a Tyrant*" (emphasis added).[686] A similar idea connects justice to the s*uum cuique tribuere* in the classical formula in the *Institutes of Justinian:* "Justice is the set and constant purpose which *gives to every one his own*."[687]

Locke and other natural law authors see the protection of property in the wider sense to be of importance (Locke II, 124, 7). The principle of the *suum cuique tribuere* deriving from our ownership of ourselves indicates the duty to respect the same right in others and to avoid injuring others' life, person, liberty, actions, or possessions.[688]

3.5.2.2 Macpherson's society divided by class

To Macpherson, if each individual is the proprietor of his own capacities and labour, as Locke argues, then those who sell their labour will become dependent upon those with property. As a result, he explains, they lose their rights and liberties. He uses passages from Locke's economic writing wherein Locke described labourers as living from hand to mouth.[689] From that, he concludes that those who have no property cannot be fully rational and that owning property reflects unequal abilities and inequalities in rationality[690]: "To put it another way, the man without property in things loses that full proprietorship of his own person which was the

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[682] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 21, emphasis added.
[683] See Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2*;* Bk. I, Ch. 2, Sec. 1, Para. 5.
[684] "[I]s a proposition as certain as any demonstration in Euclid: for the idea of property being a right to anything, and the idea to which the name "injustice" is given being the invasion or violation of that right, it is evident that these ideas, being thus established, and these names annexed to them, I can certainly know this position to be true, as that a triangle has three angles equal to two right ones." (Locke (1693), *Education*, Para. 18, emphasis added).
[685] Simmons, (1992), 319.
[686] Pufendorf, (1749), *The law of nature and of nations*, Bk. VII, Ch. 8, Para. 719, note 2.
[687] Justinian, (533 AD), Bk. 1, Title 1, Sec. 10, emphasis added.
[688] See further references on Locke's predecessors on equality on p. 79.
[689] Macpherson, (1962), 222.
[690] Macpherson, (1962), 446-447.

basis of his equal natural rights."[691]

To further support his arguments, Macpherson cites Locke: "Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place where I have a right to them in common with others, become my property" (Locke II, 28).[692] From this paragraph he concludes that for Locke, the wage labour relationship was natural even in the state of nature. This supposed connection combined with Locke's lack of explanation as to why a free man would sell his labour to someone else leads Macpherson to conclude that "the continual alienation of labour for a bare subsistence wage, which he [Locke] asserts to be the necessary condition of wage-laborers throughout their lives, is in effect an alienation of life and liberty."[693]

Vaughn (1980) replies and says that Locke was only describing a typical contractual relationship whereby one sells his labour for the guarantee of a wage. For support, Vaughn (1980) notes that

> "a Free-man makes himself a servant to another, by selling him for a certain time, the service he undertakes to do, in exchange for wages he is to receive: and though this commonly puts him into the family of his Master, and under the ordinary discipline thereof; yet it gives the master but a temporary power over him, and no greater, than what is contained in the contract between."[694]

I oppose Macpherson's explanation as it is vague and ignores the context of a contractual relationship such that a conclusion on a divided society is without merit. I agree with Tully, who adds that the right to life, liberty, and means of support cannot be alienated without consent. He emphasises that unlike a slave, the servant or wage earner does not lose control over his life or liberty, but rather merely agrees to a contractual relationship under which he or she sells his or her service in return for a conventional right.[695] He supports this argument with the following Locke passage: "A Man can no more justly make use of another's necessity to force him to become his Vassal, by with-holding that Relief, God requires him to afford to the wants of his Brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a Dagger at his Throat offer him Death or Slavery."[696] This implies that wage relationships based on necessity are forbidden and the owner of property has to offer charity as a right and not as a duty to help the needy under a labour contract.[697]

Moreover, I argue that there are no clearer objections to Macpherson than Locke's own words on slavery (Locke II, Chapter IV, 22–24).[698] For Locke, slavery is a continuing state of war

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[691] Macpherson, (1962), 231. Macpherson continues, "*[T]hat while the laboring class is a necessary part of the nation its members are not in fact full members of the body politic and have no claim to be so; and secondly, that the members of the laboring class do not and cannot live a fully rational life*" (Macpherson, (1962), 221-222).
[692] Macpherson, (1962), 220.
[693] Macpherson, (1962), 220.
[694] Vaughn, (1980), 16.
[695] Tully, (1980), 135–145.
[696] Locke I, Sec. 42; see Locke II, 37.
[697] See also Gill, (1983), 687.
[698] "Sec. 22. The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it. Freedom then is not what Sir Robert Filmer tells us, Observations, A. 55. a liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws: but *freedom of men under government is, to have a*

(Locke II, 24). Each individual has "a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature" (Locke II, 22). Locke clearly says that this freedom from the arbitrary power of another cannot be separated from man's power of self-preservation: "This freedom from absolute, arbitrary power, is so necessary to, and *closely joined with a man's preservation, that he cannot part with it,* but by what forfeits his preservation and life together" (Locke II, 23, emphasis added).

3.5.3 The specific use of the term "person" instead of "body"

When Locke speaks about a man's right over himself, he uses the term "person" (Locke II, 6, 27, 44, 123, 173, and 190) rather than body: "[E]very man has a *Property in his own Person*. This nobody has any right to but himself" (Locke II, 27, emphasis added). "Every man is born with a double right: first, a *right of freedom to his person, which no other man has a power over,* but the free disposal of it lies in himself" (Locke II, 90, emphasis added).

Waldron (1988) confirms this and mentions that Locke avoids Grotius's definition, which includes the term body while deliberately using the term person:

> "*Locke does not* say or require in his theory of appropriation *that we should have property rights in our bodies*. *The term he uses is "person";* "the use of 'person' rather than 'body' does seem to be *deliberate*. Locke repeats it in at least four places in the Second Treatise when he refers to a man's right over himself and he refrains from following Grotius in describing a man's life, body, and limbs as his own.*"*[699]

Tully (1980) expounds on this, saying that "the distinction between man and person is *central to Locke's theory*."[700] Tully explains that for Locke, a person, in comparison to a man, is a free, intelligent, thinking man who uses his reason to intentionally reflect on the situation.[701]

> "Since the term '*person' is predicted only of free agents*, a person is an agent who performs *intentional, deliberate action* (ch. Yolton, 1970: p.148). The identify of a person, as opposed to a man, is *self-consciousness* (Locke II 27.9)…([A] *person*) is a

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standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature." (Locke II, 22, emphasis added).

"Sec. 23. This *freedom from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together*: for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases. No body can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it." (Locke II, 23, emphasis added).

"Sec. 24. This is the *perfect condition of slavery, which is nothing else, but the state of war continued*, between a lawful conqueror and a captive: for, if once compact enter between them, and make an agreement for a limited power on the one side, and obedience on the other, the state of war and slavery ceases, as long as the compact endures: for, as has been said, no man can, by agreement, pass over to another that which he hath not in himself, a power over his own life. …for the master could not have power to kill him, at any time, whom, at a certain time, he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life, that he could not, at pleasure, so much as maim him…." (Locke II, 24, emphasis added). See further Ref. from *Second Treatise* in p. 128-129.

[699] Waldron, (1988), 168-180, emphasis added. See also Colman, (1983), 189-190.

[700] Tully, (1980), 105, emphasis added.

[701] Tully, (1980), 106-107.

> thinking *intelligent Being, that has reason and reflection*…This consciousness which always accompanies thinking, is that, that makes everyone to be, what he calls self…in this alone consists personal identity…*in being consciousness of thinking*, self-consciousness is also consciousness of action." (emphasis added)[702]

I agree with Tully and Waldron that Locke uses the term person rather than body, but I demonstrate that in some of Locke's references to the term person, he does not refer to men using reason. "*If he be absolute lord of his own person and possessions,* equal to the greatest, and subject to no body, why will he part with his freedom?" (Locke II, 123). Here, Locke answers specifically that the state of nature has departed because *"the greater part no strict observers of equity and justice*" (Locke II, 123, emphasis added). As such, a person is not always a reflective rational man but also one who does not follow equity and justice.

Tully argues that within Locke's *Second Treatise*, Locke uses the word "person" in connection with an "intelligent" being "capable of a Law" (Locke II 27, 26).[703] Tully further compares Locke to other natural law writers. He demonstrates that "Pufendorf draws on Aristotle's analysis in book three of the Nicomschean Ethics…*Aristotle, like Locke, writes that a free agent 'owns' his actions (III 4 a 12).*" As such, Tully mentions that "*Locke's use of the term 'person' is also traditional. 'A person', writes Aquinas, 'is master of his action through his will (ST: I.II. 2.1.)'.*"[704]

I can agree with Tully that the term person applies to ownership of action but does not necessarily refer to an intelligent man following reason. Locke's choice of the term "person" rather than body showed that man, a created being, cannot own his body; as a superior creation, he is obliged to preserve this body. He is not free to harm himself or others or to destroy himself or others; he must preserve the body he was given. "[T]hough man in that state have an *uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession,* but where some nobler use than its bare preservation calls for it" (Locke II, 6, emphasis added).

Men are not free to destroy themselves or other creatures in their possession without a "nobler" cause than their own existence.[705]

> "[M]en being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, *sent into the world by his order, and about his business; they are his property*, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, *there cannot be supposed any such subordination among us, that may authorize us to destroy one another.*" (Locke II, 6, emphasis added)[706]

It is man's duty to preserve life and bodily organs and not to destroy them. It is a fundamental duty to preserve self—and when it is not in conflict with that self-preservation, we have a duty to protect others. So Locke specifically uses the term "person" to imply that man is the owner of all his actions, labour, and liberties necessary for self-government and preservation

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[702] Tully, (1980), 106-107.
[703] Tully, (1980), 106-108 citing *"*In book two of the Essay Locke explicates the concept of the person and his action as it is conventionally used in the seventeenth century (Yolton, (1970), 145). '*Person',* Locke writes 'is a Forensick *Term appropriating Actions and their Merit*; and so *belongs only* to *intelligent Agents capable of a Law'* (Locke II, 27, 26). …'the person is therefore said to 'own' his actions [Locke II, 27.26]."
[704] Tully, (1980), 111, emphasis added. See additional references on p. 172.
[705] See analysis in the chapter on limits on p. 245.
[706] See p. 76.

of self and others. Further,

> "[F]or a *man, not having the power of his own life, cannot,* by compact, or his own consent, *enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases*. Nobody can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it." (Locke II 23, emphasis added)

Here, Locke clearly says that one cannot enslave himself or give his life. No one has that power; consent or agreement for this is not man's to give. Further, "Nothing was made by God for man to spoil or destroy" (Locke II, 31).

> "[F]or *no body can transfer to another more power than he has in himself; and no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another*. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him for the preservation of himself, and the rest of mankind." (Locke II, 135, emphasis added)

Locke clearly explains a recognized Roman principle, "*Nemo plus juris ad alium transferre potest quam ipse haberet*." "[N]o body can transfer to another more power than he has in himself" (Locke II, 135). Each has thus power over self and bodily movements but none has the power to destroy his life and cannot give this power to another. So a man also has no power over the life, liberty, or possessions of another.

Within the *Second Treatise* Locke repeats this principle: "No man .. . [has] a power to deliver up [his] preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another" (Locke II, 149). Locke insists that no one can give away the power over self-preservation or even the means do so.

> "[I]t being *out of a man's power so to submit himself to another, as to give him a liberty to destroy him*; God and nature *never allowing a man so to abandon himself, as to neglect his own preservation*: and *since he cannot take away his own life,* neither can he give another power to take it." (Locke II, 168, emphasis added).

To conclude, Locke posits that one can transfer rights in material property, labour, and actions but not in his own life or bodily organs. These are not his to give, and he is obliged to preserve them. This is confirmed by Locke's predecessors (see p. 130-131).

3.5.3.1 Alienation of rights

In general, Locke does not seem to object to the alienation of rights to actions and labour: "that estate, being (the) father's property, he may dispose or settle it as he pleases" (Locke II, 116. See also Locke II, 120, 121, 136). It is only a man's body that he cannot destroy (Locke II, 6, 23, 31, 135, 149, 168).

Tully (1980) argues the extreme notion that to Locke, the rights to life, liberty, and property are inalienable because they are given in common and the common is to be preserved. Tully opposes property alienation because "men cannot alienate the world which is their property in common."[707] Tully recognizes only inheritance and charity as subsequent title in Locke's

[707] Tully, (1980), 88.

property theory.[708] He claims that labour only provides a right of use in the property to subsist. This does not include the right of alienation or excluding others from the use of the same property.[709]

But Locke's text (Locke II, 116) does not agree; Hartogh (1990) notes that "if Tully's theory is correct the inference would be that there can be no legitimate property in land, even in the English common."[710] This interpretation is "in contrast to Locke's own texts whereby Locke recognizes the individual right to alienate" (see Locke II, 116, 120 and; 121 and the common right to alienate Locke II, 136).[711]

Simmons (1992) adds that there is no textual evidence in Locke to show that rights are not to be alienable. He demonstrates that for Locke, as soon as labour creates a property right, a subsequent title might be transferred by various means such as inheritance, need, reparation of injuries, and alienation of property rights by gift or trade.[712] Simmons also shows a reference from Locke's text that "properties and possession" involve "the right…to *dispose of them, as they please*" (Locke, *Education,* 105, emphasis added). Further, "both ownership and rights of property (are), in general entirely free, it being open to everyone individually *either to harvest his wealth or to give away his riches to anyone else and, as it were, to transfer them*" (Locke, Second Tract, 229, emphasis added). Simmons also demonstrates that for Locke, the right of the property owner is to "dispose of it by his positive grant" or to "transfer" it (Locke I, 87–88).

I agree with Simmons's explanation that for Locke, mankind has the right not to the whole common but to their own fair share of the world, given in common. Simmons then concludes that Locke's property right includes a free (if harmless) right of alienation of all property, including goods and land.[713] I join Simmons and oppose Tully in arguing that Locke's property right includes a free (limited under natural law and required to cause no harm) right of alienation in all definitions of property. Modern authors usually agree[714] that Locke allows alienations of property rights, if limited by the natural law. But no alienation is valid when it comes to the body and life. This view is again confirmed by Locke's predecessors. For Grotius, alienation of body and life is void while any other unrestricted alienation of rights can be executed by mutual agreement. It is in this way that the *suum cuique tribuere* could be diminished or extended.[715]

Grotius noted in the *De iure praedae*[716] that by divine statute and the law of nature, man cannot harm his body:

> [I]t is "possible *for the holders of these rights to alienate them freely by a voluntary act of self-obligation, restricted only in that an alienation of the own life and body is void.* Apart from that, the inhabitant of the state of nature can alienate certain rights "*by an indication of his will [indicio voluntatis]," obliging him self "to his fellow*

[708] Tully, (1980), 131-132. See also Tully, (1980), 88 and, 113-14.
[709] Tully, (1980), 112-116.
[710] See Hartogh, (1990), 659-664.
[711] See Hartogh, (1990), 659-664.
[712] Simmons, (1992), 232; Ch. 3.2, 4.4, 6.3.
[713] Simmons, (1992), 232; Ch. 3.2, 4.4, 6.3.
[714] Simmons, (1992), mentions others who support alienation in Locke, including; Perry, (1978), 52; Andrew, (1988), 94-95; and Snyder, (1986), 733. See Simmons, (1992), 232, note 32.
[715] Grotius, (1625), *War and Peace,* Bk. II, Ch. 17, Sec. 2, Para. 1.
[716] Grotius, (1868), *De Iure,* Bk. 2, Ch.. 5. See also within Straumann, (2006), 344.

> *man" and giving rise to new personal and property rights in other human beings (TQ, fol. 287r, th. 3).* The inhabitants of the state of nature do not have any legal claims with regard to the other inhabitants until they actually decide to engage in transactions with each other."[717]

Pufendorf agrees that alienation of property is possible but says that for any transfer of rights, consent by both parties is needed.[718] For Pufendorf, "it is impossible to conceive how the mere corporal act of one person can prejudice the faculty of others, unless their consent is given."[719] He explains, "It must be observed that the concession of God by which He gives men the use of terrestrial things is not the immediate cause of ownership . . . but *it [ownership] presupposes a human act and an agreement, express or implied*."[720] For Pufendorf, a contact is always necessary. The *suum cuique tribuere* could not include objects until a contact with mutual agreement is created as to what belonged to whom.[721]

3.5.4 Locke's original grant to the whole of humanity in "common"

For Locke, the original grant of God to mankind is in common to all humanity. Locke explains that the grant of earth "in common" can be discovered by both natural reason and also by divine revelation.

> "Whether we consider *natural reason*, which tells us, that *men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence*: or *revelation*, which gives us an account of those *grants God made of the world to Adam, and to Noah, and his sons*, it is very clear, that God, as king David says, Psal. cxv. 16. has given the *earth to the children of men; given it to mankind in common."* (Locke II, 25, emphasis added)

He further repeats that the original grant by God to mankind was "*in common*…all the Fruits it naturally produces, and Beasts it feeds, belong to *Mankind in common*, as they are produced by the spontaneous hand of Nature; and *nobody has originally a private Dominion, exclusive of the rest of Mankind*, in any of them, as they are thus in their natural State" (Locke II, 26, emphasis added). "*God gave the world to men in common*; but since he gave it to them for their benefit, and the greatest *conveniences of life they were capable to draw from* it" (Locke II, 34, emphasis added). This common stock is given for the benefit of humanity and for their "greatest conveniences."

Locke appears to use Pufendorf's example of picking up an acorn (Pufendorf 4, 4, 13) to argue the necessity of an earlier mutual agreement for certain rights in property:

> "He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, *when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could*. That labour put a distinction between them and common: that *added something to them more than nature*, the common mother of all, *had done*; and

[717] Emphasis added. See Straumann, (2006), 344-345.
[718] Pufendorf , (1672), *De Jure naturae* , Vol. IV, Lib. 9, Cap. 2.
[719] Pufendorf, (1672), *De Jure Naturae*, Vol. II, Lib. 4, Cap. 4, Para. 5.
[720] Pufendorf, (1672), *De Jure Naturae* , Vol. IV, Lib. 4, Cap. 5, Para. 4, emphasis added.
[721] Pufendorf, (1672), *De Jure naturae*, Vol. IV, Lib. 4, Cap. 14; Vol. IV, Lib. 4, Cap. 9.

> so they became his private right. And will any one say, he had no right to those acorns or apples, he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? *If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him.*" (Locke II, 28, emphasis added)

To Locke, no consent is necessary for certain property rights in the state of nature; otherwise, men would starve to death. The first gathering makes an object one's "own" as it implies a bodily movement—labour.

It is unnecessary to expound upon modern authors who agree that the world is given in common; Locke's own words make it indisputable that the world and its natural resources are given "in common" to all. There is, however, an interesting modern debate on this terminology. Tully refers to a "positive" and "negative" community. Tully holds that it is a positive community:

I. The world belongs to no one and each has a liberty right to make use of it (negative community (Pufendorf)), or

II. The world belongs to everyone and each has a claim right to make use of it (positive community (Grotius)).

In comparison to Pufendorf, in Grotius's state of nature, all men possessed everything in common. Everyone could have possessed whatever they desired and could consume. It was an injury to deprive one of that possession.[722]

> "God gave to *mankind in general*, dominion overall the creatures of the earth, from the first creation of the world; … All things, as Justin says, formed *a common stock for all mankind*, as the inheritors of one general patrimony… An example of a community of goods, arising from extreme simplicity of manners, may be seen in some nations of America, who for many ages have subsisted in this manner without inconvenience. The Essenes of old, furnished an example of men actuated by mutual affection and holding all things in common, a practice adopted by the primitive Christians at Jerusalem, and still prevailing among some of the religious orders."[723]

Grotius confirms that dominion is given in common to all, "to mankind in general*."* For Grotius, the first grant to humanity was in common to all mankind, "a common stock for all mankind." Grotius uses Cicero and others as support. He claims that the original relationship between men and the natural world was a kind of positive community. Everyone had an equal right to the earth's natural resources. For private property to be introduced, a universal agreement to dissolve this original right was necessary. This universal agreement is usually referred to as the general "compact theory." Grotius notes, "God had not given all things to this individual or to that, but *to the entire human race,* and thus a number of persons, as it were en masse, were not debarred from being substantially sovereigns or owners of the same thing" (emphasis added).[724]

For Pufendorf, on the other hand, nothing belonged to anyone—it was a negative community in which no property rights were possible before mutual obligation. No external objects could

[722] Grotius, (1625), *War and Peace,* Bk. II, Ch. 2, Sec.1, Para. 5.
[723] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 1, emphasis added.
[724] Grotius, (1609), *Mare Liberum*, Ch. 7, Para. 24.

be added to the *suum cuique tribuere* without human agreements.[725] Pufendorf writes,

> "[T]hings are said to *be negatively common*, as considered before any human act or agreement had declared them to belong to no one rather than to another. In the same sense, things thus considered are said to be No Body's, rather negatively, than privatively, i.e. that they are not assigned to any particular person, not that they are incapable of being so assigned." (emphasis added)[726]

Unlike Grotius, Pufendorf argued for a negative community[727] where nothing belongs to anyone. For Pufendorf, without human agreement, men could use nothing at all. Pufendorf supports his argument with the common use of animals, which do not have rights in property as they are unable to make agreements. He demonstrates that animals use and consume things (Genesis, *Book of Creation*, ch 1, Sec. 30)[728] with no right of property. If an animal puts something aside for the future, the others are not prevented from taking it. An animal

> "takes for his own nourishment everything he first happens upon. And even if any one of them has stored up some things for his future use, *others are not prevented from seizing them, for the reason that there is no convention among animals which confers a special right over a thing to the one that first got it.*" (emphasis added)[729]

Pufendorf explains that the possessors do not have rights in the fruits that they seize but merely the liberty to posses them. Possessors are thus unprotected from second possessors' exercising the same liberty.

Dunn (1984) confirms the leading modern interpretation that Locke's state of nature is a positive community like that of Grotius. The world was given to humans in common for their self-preservation.[730] Simmons (1992) argues that the world belongs to everyone. and everyone has a right to use it.[731] Simmons adds that the type of community is irrelevant; to Simmons even if it were a negative community, appropriation would not demand consent. He explains that no one could argue harm if one takes that over which others have no claim.[732] I object to Simmons and agree with Tully (1980) here that it is important to demonstrate that it is a positive community because if it were a negative community, there would have been no "great difficulty" to solve for Locke in the first place.[733] For Tully, it is important to know that

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[725] Pufendorf, (1672), *De iure Naturae*, Vol. IV, Lib. 4, Cap. 9. See also Pufendorf, (1672), *De iure Naturae*, Vol. IV, Lib. 4, Cap. 14. Pufendorf analyses the origins of property and its obligations in *De iure Naturae*, Vol. IV, entire Lib. 4-5, including the rules related to its transference under *De iure Naturae*, Vol. IV, entire Lib. 6-13.

[726] Pufendorf, (1672), *De iure Naturae*, Vol. IV, Lib. 4, Cap. 2.

[727] Tully, (1980) uses the term "negative" or "positive" community to distinguish between the possibility that the world belongs to no one and each individual possesses a liberty right to make use of it (negative community) and the possibility that the world belongs to everyone and each has a claim right to make use of it (positive community). Tully, (1980), 80-98.

[728] See Genesis reference on p. 252

[729] Pufendorf, (1672), *De iure Naturae* , Vol. IV, Lib. 4, Cap. 5.

[730] Dunn, (1984), 37.

[731] Simmons, (1992), 241.

[732] Simmons, (1992), 241. Simmons adds that a distinction must be made within Locke as to the "common," referring either to outside the legal political territory, the original communal state, or the wilderness in America (Locke II, 49). Here, he says, consent is not required from the other commoners. The other "commons" is within some legal territory as the "*land that is common in England*" being the "*joint property of this country or this perish*" (Locke II, 35). This commons must follow the "*law of the land*" and requires the consent of all fellow commoners since that is "*left common by compact*" can only become private via another compact (Locke II, 35).

[733] Tully, (1980), 80-98; Tully, (1995), 111.

it was a positive community to understand how Locke solved the "great difficulty."[734]

Simmons distinguishes possibilities of the positive common[735] and concludes that Locke means a divisible positive community whereby each possesses only a claim of right to an "equal share." "[E]ach person has a (claim) right to a share of the earth and its products *equal to that of every other person*. Each may take an equal share independent of the decisions of the other commoners; each has property in the sense of *a claim on an equal share* (but not possession of or a claim on any particulars share)."[736] According to Tully (1995), Simmons's definition is too broad, covering "more indices than the text warrants."[737] Tully mentions that in other places in Simmons's text, Simmons distinguishes between "access" and "share" and calls a "right of preservation and self-government" "a moral power…to make property in up to *a fair share* of what *God has given us*."[738] Tully points out that this formulation is not identical to the others and creates some difficulties.[739] Tully concludes that Simmons's definition of the common is too broad in entitling access to materials for labour for the purpose of preservation, even without a natural claim of right.[740] Tully then argues that Sreenivasan's definition better suits Locke's need: "[T]he right is an inclusive right of access to the materials, provided in common by God, for the purposes of actualizing—in

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[734] See Great Difficulty below p. 140.

[735] Simmons, (1992) distinguishes among "positive" commons:

1. *Negative community*: as per Pufendorf and Hobbes in which no one has a protected right to anything in the world but a mere liberty to use (also supported by Rapaczynski, (1987), 181-85; Kelly, (1988), 284; Waldron, (1988), 155; Ryan, (1984), 29-30; Perry, (1978), 51-52, 78).
2. *Joint positive community*: as seen in Grotius, where everyone holds a joint property right to the world (see Thomson, (1976), 664-65, cited in Simmons, (1992), 238).
3. *Inclusive positive community*: supported by Tully, where each has an inclusive use right to the common for support and comfort (Tully, (1980), 122-29).
4. *Divisible positive community*: Simmons's own understanding whereby each possesses only a claim right to an "equal share" (Simmons, (1992), 238, emphasis added).

[736] Simmons, (1992), 238, emphasis added.

[737] Tully, (1995), 112.

[738] Simmons, (1992), 240, emphasis added.

[739] Tully, (1995), argues five objections against Simmons's definition of "fair share":

I. Tully mentions that Locke uses the term "share" while specifically measuring the person's entitlements in proportion to their labour and non-spoilage. This for Tully does not take Locke's right to be an *innate natural right* (Simmons, (1992), 283, emphasis added.). I argue that for Locke, labour explains property rights within the state of nature as an innate natural right.

II. Tully mentions there is no evidence of a natural right to an "*equal*" share, and inequalities do not seem to violate rights of others in the state of nature. Emphasis added. I argue by equal both Simmons and Locke mean equal opportunity to self-Government (Locke II, 54. See p. 80).

III. Tully further argues that a "right of claim" for a share for the "earth and its products" is actually stronger than Locke's intended right. Tully notes that the original community within Locke I, 41, I, 87 and Locke II, 25 is "*considerably below this robust claim right*." For Tully, these passages specify only a claim right limited to the necessary means of labour for *self-preservation and convenience* (Tully, (1980), 122, emphasis added). I argue that for Locke, also comfort is allowed (p. 137-138).

IV. For Tully, if "each *may take an equal share independent of the decisions of others*," there is no "great difficulty" to solve because *non-consensual appropriation is the initial condition within Locke*. Emphasis added. I argue that for Locke, property is based on labour. Consent is only an added ground for better protection.

V. If "*but not possession of or a claim on any particular share*" is interpreted as no one has any private property, then it is harmless "for this is the problem." If otherwise, it means, as Sreenivasan, (1995) argues, that if no one has "*a claim on any particular share*," then it is "false." This because for Locke, everyone has a claim to any piece of earth first appropriated (which is the difficulty) (See Tully, (1995), 111-112; Sreenivasan, (1995), 37-38). I agree on this.

[740] Tully, (1995), 112.

consumption, but through labour—the prior right to preserve oneself."[741] I do not develop this discussion here but simply note its existence. In general, I follow Simmons's definition, which gives each individual an equal fair share claim of right to the common within a positive community. It better suits Locke's view because the common is limited. The definition of Simmons thus covers situations where there is no more material property in common. I cannot agree with Tully's definition since to him everyone has a mere inclusive use right. But for the purpose of this thesis, it is sufficient to say that Locke supports a positive community like Grotius whereby the world belongs to everyone and each has a claim of right to make use of it. I do agree with Tully against Simmons that it is important to demonstrate that it is a positive community because to ignore it leaves no "great difficulty" that is the basis of Locke's labour theory.[742]

In an interesting modern comparison of both predecessors of Locke, Schlatter (1951) mentions that Pufendorf's state of nature removes the need for Grotius's universal consent as "men had no joint or overlapping rights in the state of nature, it was not necessary to assume that those rights must have been extinguished by universal consent."[743] But unlike Pufendorf, for Grotius, certain property rights for self-preservation could be appropriated in the state of nature without a prior need for agreement before the transition to private property right by agreement.[744] This is related to the immediate consumption of objects that men could find within the common that required an uninterrupted physical possession (using caves for dwelling and wearing skins of wild animals for clothes). As Grotius puts it, this possession is for "the fruits which the earth brought forth of its own accord, without toil 'in a period when men were content' to dwell in caves, to have the body either naked or clothed with the bark of trees or skins of wild animals."[745] Grotius calls this basic possession "the privilege of lawfully using common property."[746] This does not exclude others from a similar use of the same object, before or after possession. It further implies that one must leave nature in the same condition as one finds it so that it can be used by others.[747] Since the same object cannot be used by more than one person in the same manner at the same time, at the very least, "All things belonged to him who had possession of them."[748] If Locke had used any of those theories, Grotius's seizure would have been more similar to Locke's labour theory. I thus join Tuck (1979), who says that even if Pufendorf's state of nature provides a clearer idea of common property, it is still more a repudiation than a defence of Grotius's attempt to construct a natural rights theory.[749] It undermines the crucial element of Grotius's original theory that for the primitive right of possession from the common, there was no need for any sort of prior agreement. Locke also develops a theory of labour that does not require prior agreement for property rights.

3.5.5 Necessity of property rights for self-preservation

Based on a need for self-preservation, Locke explains that it is not logical to place man in a situation in which self-preservation would violate the law of nature. As such, the need for

[741] Sreenivasan, (1995), 112. Taken from Tully, (1995), 111-112.
[742] See p. 140.
[743] Schlatter, (1951), 146.
[744] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 1. For confirmation, see Olivecrona, (1974), "*Appropriation in the State of Nature*, 216.
[745] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 4.
[746] Grotius, (1609), *Mare Liberum*, Ch. 7, Para. 23.
[747] For confirmation, see Knight, (1919), 13.
[748] Grotius, (1609), *Mare Liberum*, Ch. 7, Para. 24. For more references on Grotius's seizure, see p. 142.
[749] Tuck, (1979), 61, 161.

self-preservation requires a right to use the products of earth. Locke explains that once born, a man has the right to self-preservation and the right to use nature and its products for that purpose: "Men being once born have a right to their preservation, and consequently to meat and drink and such other things as nature affords for their subsistence" (Locke II, 25).

Fruits of the earth "*being given for the use of Men, there must of necessity be a means to appropriate them some way or* other before they can be of any use, or at all beneficial to any particular Man" (Locke II, 26, emphasis added). "The Fruit, or Venison, which nourishes the wild Indian, who knows no Inclosure, and is still a Tenant in common, *must be his, and so his, i.e., a part of him, that another can no longer have any right to it, before it can do him any good for the support of his Life*" (Locke II, 26, emphasis added). The products of earth were created for the support and well being of the living creatures within it. It is a necessity for humanity to appropriate them one way or another in order to survive. This can also be understood from the statement that "[i]f such a consent as that was necessary, *Man had starved*, notwithstanding the Plenty God had given Him" (Locke II, 28, emphasis added). Each thus has a right to appropriate, for without this right, man would have starved to death without the possibility to activate his existence. And the right of self-preservation implies a positive obligation of mankind to use the products of nature for consumption (Locke II, 6).[750] It is thus a necessity to have property rights as this is linked to mankind's ability to preserve the self, which is a fundamental natural law: "penury of his condition required it of him" (Locke II, 32).

In the *First Treatise*, Locke writes,

> "For the *strong desire of preserving his life having been planted in him, as a principle of action by God himself, reason*, which was the *voice of God in him*, could not but teach him and assure him, that pursuing that natural inclination he had to preserve his being, he *followed the will of his Maker*, and *therefore had a right*... to make use of those things, *that were necessary or useful to his being*." (Locke I, 86, emphasis added)

Tully (1980) supports Locke's necessity to appropriate for self-preservation: "Since the two rights, to preservation and to the means of subsistence, are discovered by natural reason, they are, ipso facto, derived from natural law. Locke derives the right to preservation from the fundamental law of nature that mankind ought to be preserved" (Locke I, 86, 2.8, 25, 149).[751] According to Locke, "God, by commanding to subdue, gave *Authority so far to appropriate;* and the conditions of human life, which require labour and materials to work on, necessarily introduces private possessions" (Locke II, 35, emphasis added). I thus join Simmons (1992) who demonstrates a great verity of authors[752] agreeing that Locke's necessity for self-preservation is to be analysed as a separate and independent ground for property rights.[753]

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[750] See citation on p. 76.
[751] Tully, (1980), 3-4.
[752] The grounds for Locke's property theory were grouped and named by many modern authors under different names: usefulness, utility, or even efficiency. See Becker, Beitz, (1980), Ch. 8, 487-502; Davis, (1987), 97, 576-594; Gibbard, (1976), 77-86; Olivecrona, (1974), "*Locke's Theory of Appropriation*," 224, 230; Waldron, (1983), 37-44. Some commentators argue that Locke's labour theory is guided only by utility and efficiency (Schwartzenbach, (1988), *Locke's Two Conceptions of Property*, 154, taken from Simmons, (1992), Ch. 5). Few argue that it is based only on merit and desert (Becker, (1977), 73, 656). Others claim that the rationale behind the labour theory is based on all of them (Shrader-Frechette, (1993), 201-219; Waldron, (1983), 37). Simmons, (1992), Ch. 5.
[753] Simmons, (1992), Ch. 5.

Simmons bases this on Locke's statements (Locke I, 86–87 and Locke II, 25–56). He summarises Locke and says that since God wills human preservation and because private property rights is necessary for this preservation**,** the property rights to specific products are finally also willed by God.[754] Each thus has a right to use the things that are necessary or useful to his being. [755]

I join modern authors' conclusion that Locke's words are sufficiently clear that it is necessary for men to have property rights for their own self-preservation. Further, God wills mankind to have property because it is needed for their preservation (Locke II, 25, 26, 28, 6, 35). For Grotius too, the fact that men were created in nature needing their surroundings for preservation indicates that there must be a valid right to appropriate items for existence: "Each man could at once take whatever he wished for *his own needs, and could consume whatever was capable of being consumed.*"[756] Pufendorf is also of the opinion that rights of property are derived from the need of self-preservation. A man cannot be maintained without the use of the products of earth, so they must have been given the right to use the products.[757]

Locke follows the natural law tendency supported predecessors that God could not have put mankind in such a situation that for the purpose of self-preservation, the law of nature would have to be broken. It is supported by natural reason as well because men must be able to preserve the self.[758]

3.5.6 The function of property: Enjoyment

For Locke, property is given to us "*to enjoy*" (Locke II, 31): "as *much as anyone can make use of to any advantage of life before it spoils;* so much he may by his labour fix a property in. Whatever is beyond this is more than his share and belongs to others. Nothing was made by God for man to spoil or destroy" (Locke II, 31, emphasis added).

What is covered under this enjoyment of property? Locke includes more than necessities of life; he includes comfort and conveniences: "God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of *life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being*" (Locke II, 26, emphasis added).

Further, Locke writes, "God gave the world to men . . . for . . . *the greatest conveniences of life they were capable to draw from it*" (Locke II, 34), that it "might serve to afford him *conveniences of life*" (Locke II, 37, emphasis added). These "which made up the great part of what he *applied to the support or comfort* of his being, when invention and arts had improved the conveniences of life, was perfectly his own, and did not belong in common to others" (Locke II, 44, emphasis added). It includes "necessity, *convenience,* and inclination to drive

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[754] "Man's Property in the Creatures, was founded upon the right he had, to make use of those things, that were *necessary or useful to his Being* ....Was it a Robbery thus to assume to himself what belonged to all in Common" (Locke I, 86, emphasis added). Simmons, (1992), Ch. 5.

[755] For good discussions see Waldron, (1979), 324-326;and Olivecrona, (1974), '*Appropriation in the state of Nature'*, 221-222 and; '*Locke's theory of Appropriation'*, 221-222.

[756] Grotius, (1625), *War and Peace,* Bk. II, Ch. 2, Sec. 2, Para. 1, emphasis added.

[757] "Such is the constitution of man's body that it *cannot live from its own substance, but has need of substances gathered from outside*....Man makes use of other created things by the will of God, which is gathered from the fact that *man cannot maintain himself without the use of them....And since God has given life to man, He is understood also to have granted him the use of those things without which His gift cannot be maintained*" (emphasis added). Pufendorf, (1749), *The law of nature and of nations*, Bk. I, Ch. 2, Para. 524-525.

[758] See additional analysis on necessity of labour, p. 143.

him into society, as well as fitted him with understanding and language to continue and enjoy it" (Locke II, 77, emphasis added). This demonstrates not only the desire for preservation but also the desire for comfort and convenience.

The modern consensus is that property is not only for preservation but also for comfort and convenience.[759] Pangle notes that unlimited ownership is not necessarily sinful,[760] but I point to Locke's references to natural law limits.[761] Simmons (1992) also demonstrates textual evidence that unlimited ownership clearly deprives others of an equivalent opportunity and produces a waste of labour (Locke II, 46, 51; See also Locke I, 41).[762]

Convenience and comfort are also recognized by Locke's predecessors. Grotius included convenience of life and not just pure necessity:

> "Since the common right to things has been established, the common right to actions follows next in order, and this right is either absolute, or established by the supposition of a general agreement amongst mankind. Now all men have absolutely a right to do such or such acts as are necessary to provide whatever is *essential to the existence or convenience of life. CONVENIENCE is included in this right;* for there is no occasion here to imagine an existence of the same necessity as was requisite to authorize the seizing of another's property."[763]

Here, Grotius demonstrates that there is nothing wrong with seeking comfort and convenience as long as no one is harmed. Grotius also states,

> "Since we ourselves are corporeal entities, other bodies are naturally able to benefit or injure us... He who bestowed upon living creatures [such as man] their very existence, bestowed also the things necessary for existence. Some of these things, indeed, are necessary to being, while others are necessary only to well-being; or, one might say that they relate respectively to *safety and to comfort.*" (emphasis added)[764]

Thus, "to enjoy" covers comfort and convenience as well as necessities of life.

3.5.6.1 True happiness via rational pursuit and the suspension of appetites[765]

Enjoyment for Locke means more than the pleasures of self-preservation and the conveniences and comfort of life. Locke discusses this more in his *Essay Concerning Human Understanding*.[766] For Locke, morality can only be expected of rational creatures if it brings them personal pleasure. [767] Forde (2001) confirms that for Locke, "moral behavior cannot be reasonably expected of human beings (or any rational beings) unless he makes it worth their while in terms of pleasure or happiness."[768] This happiness can be the highest degree of

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[759] For modern agreement and discussion, see Myers, (1995), 638 and Simmons, (1992), Ch. 5.
[760] Simmons, (1992), Ch. 5, citing Pangle, (1988), 162.
[761] See the chapter on natural law limits on p .210.
[762] Simmons, (1992), Ch. 5.
[763] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 28, emphasis added.
[764] Grotius, (1868 ed.), *De iure***,** "Prolegomena", 11.
[765] For full citations of Locke demonstrating the same meaning of enjoyment as a rational suspension of appetites see my analysis of Locke's text on *human understanding* p. 193.
For further important support on the same see my analysis of Aristotle's meaning of pleasure as a state of the soul versus bodily pleasures p. 202
[766] See detailed analysis on p. 191.
[767] Locke, (1689), *Human understanding*, Bk. II, Ch. 27. Para. 18.
[768] Locke, (1689), *Human understanding* , Bk. II, Ch. 21. Para. 62.

pleasure.[769]

To Locke, happiness must be sincere from within and not related to an external thing such as alcohol: "[T]he highest perfection of intellectual nature lies in a careful and constant pursuit of true and solid happiness," taking care "that we mistake not imaginary for real happiness."[770] He explains that drunkenness and profligacy are invalid.[771]

To Locke, it is also clear that pleasure is not about satisfaction of bodily desires but about limiting those selfish desires using moral choice: Locke says it is our duty is to suspend selfish desires until we have deliberated properly upon real happiness and determined which path will take us there[772]: "[W]e are, by the necessity of preferring and pursuing true happiness as our greatest good, *obliged to suspend the satisfaction of our desires in particular cases*" (emphasis added).[773]

In other words, a man must consult reason and natural law limits before he can know whether an act may harm someone. Only a calculated act under the limitations of reason can lead to true everlasting joy. Locke is clear that true happiness is not about following selfish desires but actually suspending, restraining, and governing them by observing reason and natural law limits:

> "Government *of our passions the right improvement of liberty*. But if any extreme disturbance (as sometimes it happens) possesses our whole mind, as when the pain of the rack, an impetuous uneasiness, as of love, anger, or any other violent passion, running away with us, allows us not the liberty of thought, and we are not masters enough of our own minds to consider thoroughly and examine fairly;….But the forbearance of a too hasty compliance with our desires, the moderation and restraint of our passions, so that our understandings may be free to examine, and *reason unbiased give its judgment*."[774]

Suspending desires deriving from violent passions such as love and anger is necessary for a true deliberation of unbiased reason to avoid harm to others.

According to Locke, moral limits restrain the untamed appetites of self-desire: "*Moral laws* are set as a *curb* and *restraint to these exorbitant desires*, which they cannot be but by rewards and punishments that will overbalance the satisfaction any one shall propose to

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[769] Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 42, 55, 56, 62.
"*All desire happiness. If it be further asked,--What it is moves desire? I answer,-- happiness, and that alone. . . .*
Para *55. ...though all men desire happiness, yet their wills carry them so contrarily; and consequently some of them to what is evil. . . .*
56. All men seek happiness, but not of the same sort. The mind has a different relish, as well as the palate; and you will as fruitlessly endeavor to delight all men with riches or… so the *greatest happiness consists in the having those things which produce the greatest pleasure, and in the absence of those which cause any disturbance, any pain.* Now these, to different men, are very different things . . .
62. ... the will, free *from the determination of such desires, is left to the pursuit of nearer satisfactions, and to the removal of those uneasinesses which it then feels, in its want of and longings after them*."
Locke, (1689), *Human understanding*, Bk. II, Ch. 22, emphasis added.
[770] Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 51; Bk. II. Ch. 21. Para; 52, 56, 60; Bk. II, Ch. 20, Para. 2.
[771] Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 35; Bk. II, Ch. 32, Para. 17.
[772] Locke, (1689), *Human understanding* , Bk. II, Ch. 21, Para. 47-53, 67.
[773] See Locke, (1689), *Human understanding*, Bk. II, Ch. 21. Para. 52-56; Locke, (1693), *Education*, Para. 33, 38, 107 (see p. 191 and following).
[774] Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 54, emphasis added.

himself in the breach of the law" (emphasis added).[775] Locke further says that mankind ought to be educated as to desires and learn to take pleasure in the industry that leads to real happiness.[776] Everyone must conform their tastes to "the true intrinsic good or ill that is in things."[777]

3.5.6.2 Conclusions on Locke's property from the common

For Locke, in the state of nature, the property of a person is defined widely to cover "*lives, liberties and estates*, which I shall call by the *general name, property*" (Locke II, 123, emphasis added, Locke II, 173).[778]

Locke explains that his natural property rights are based on the need for self-preservation and ownership. It is impossible to imagine a creator cruel enough to put us on earth with an impulse to live and then punish us by prohibiting us from trying to survive. He explains that God could not have put mankind in such a situation that for the purpose of self-preservation the law of nature would have to be broken (Locke II, 26 and 35).

In Locke's state of nature, men have rights of property in objects from the common, used for self-preservation and convenience; man can add value to this property through labour.[779] Anything more requires human will and regulation (Locke II, 122). However, those agreements are still subject to the guidance of the superior law of nature. Any human regulation of the positive law of property rights is to be interpreted in accordance with the universal and perpetual natural law, aligning it with men's needs of the time.[780] Locke uses labour as a central means to acquire property. With the help of labour, Locke proves that men could have property rights via natural law, without the need for human consent. Locke bases it on the presupposition that our actions and labour are our own.

Locke creates restricted property rights in objects and land to which man can add value by annexing something of his own. However, those specific property rights are strictly limited by the natural law premise of no injury to others. These limitations are inferred from the rights of each to posses his own sphere and the obligation not to damage the sphere of others.[781]

3.5.7 Locke's "Great Difficulty"

Right after recognizing that the right of property is given in common, Locke asks himself, "this being supposed, its seems to some a very *great difficulty* how any one should ever come to have a property in anything" (Locke II 25, emphasis added). "I shall endeavor to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners" (Locke II, 25). Locke's problem or "great difficulty" is how, from this original communal situation in which all belongs to all, anyone can acquire private property rights without the consent of all commoners and without causing harm.

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[775] Locke, (1689), *Human understanding*, Bk. I, Ch. 3, Para 13. Locke thus sees the law of nature and the use of reason as the only path to sincere and lasting happiness.
[776] Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 51, 55, 69.
[777] Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 53. See also Para 52.
[778] See p. 118.
[779] See p. 142.
[780] See p. 34 and p. 44.
[781] See p. 210.

Pufendorf assumes a mutual agreement for the introduction of private property. This was not acceptable to Locke. Locke thought it impossible that all mankind must reach a common agreement and insisted that if the consent of all is a prerequisite, men would starve to death. "If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him" (Locke II, 28). Locke explains that for needs of self-preservation and on the basis of ownership of person and actions, property rights are implied even from the common if a person has added value through labour. Locke's basis for property is thus not human agreement but the power of a person's actions.

Tully (1995) adds to Locke's great difficulty by noting that the basic norm of Western politics is "*Quod omnes tangit*" ("what affects all must be approved by all"), and "appropriation is usually taken to adversely affect others."[782] Tully further concludes that Locke clearly solves this difficulty through his labour theory. Locke admits to having solved the difficulty, which is "ignored by interpreters who consequently read and misinterpret sections of the chapter in isolation."[783] Locke explains how mankind, in an age of abundance, could establish property rights without the need for common agreement and consent and without causing injury to others. His answer is the theory of labour, as detailed below.

I thus agree with Tully that Locke solves the great difficulty with his labour theory. I further add that with his property doctrine, Locke gives property rights a well-established foundation on natural law via the use of labour.[784]

[782] Tully, (1995), 109.
[783] Locke II, 39, 51; see Tully, (1995), 109.
[784] See p. 142. "And thus, I think, it is very easy to conceive, without any difficulty, how *labour could at first begin a title of property in the common* things of nature, and how the spending it upon our uses bounded it. So that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. *Right and convenience went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of. This left no room for controversy about the title, nor for encroachment on the right of others;* what portion a man carved to himself, was easily seen; and it was useless, as well as dishonest, to carve himself too much, or take more than he needed." (Locke II, 51, emphasis added)

3.6 **Locke's labour theory as a basis for the valid accumulation of property**

3.6.1 Introduction

Locke's labour theory is the answer to the great difficulty (Locke II, 25) of acquiring property rights from the common without gaining mutual consent of all mankind (as in Grotius's and Pufendorf's compact). Within his state of nature, Locke uses labour as the basis for property rights to prove that men can possess property rights via natural law, without the need for human will and consent. He uses his labour theory and bases it on the presupposition that our person is our own, as well as our actions and labour. The use of our actions and bodily movements to modify an object found in nature and give it additional value gives rise to the right of property. In other words, it is a value added to the object that alters it from its state of nature. In Locke's words,

> "[E]very man has a *Property in his own Person*. *This no Body has any Right to but himself. The Labour of his Body and the Work of his Hands, we may say, are properly his*. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath *mixed his Labour* with, and *joined to it something that is his own*, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other Men…." (Locke II 27, emphasis added)

For Locke, an individual's labour removes an object from its original state of nature while adding value to it: "The labour that was mine, removing them out of that common state they were in, hath fixed my property in them" (Locke II, 28). Here again, Locke explains that something that was the person's property was annexed to the object while removing it from its natural state. "He that in Obedience to this Command of God, *subdued, tilled* and sowed any part of it, thereby *annexed to it something that was his property*, which *another had no Title to, nor could without injury take from him*" (Locke II, 32, emphasis added). "He that had as good left for his Improvement, as was already taken up, needed not complain, ought not to meddle with what *was already improved* by another's Labour: If he did, its plain he desired the benefit of another's Pains, which he had no right to" (Locke II, 34, emphasis added). He who labours on an object adds value and improves it. The labourer is to be rewarded with rights in the object for his efforts. It would be an injury to the labourer if someone interfered with the rights in the object due to his labour to add something of his own.

Locke gives everyday examples of adding value, such as wine, cloth, or bread. Labour adds the "greater part" of value so that without the land's improvement for the use of the common, such as through tilling or planting, the land might be considered a waste with little value:

> "*To make this a little clearer, let us but trace some of the ordinary provisions of life*, through their several progresses, before they come to our use, and see how much they receive of their value from human industry. *Bread, wine and cloth, are things of daily use, and great plenty; yet notwithstanding, acorns, water and leaves, or skins, must be our bread, drink and clothing, did not labour furnish us with these more useful commodities*: for whatever bread is more worth than acorns, wine than water, and cloth or silk, than leaves, skins or moss, that is wholly owing to labour and industry; the one of these being the food and raiment which unassisted nature furnishes us with; the other, provisions which our industry and pains prepare for us, which how much they exceed the other in value, when any one hath computed, *he will then see how*

> *much labour makes the far greatest part of the value of things we enjoy in this world*: and the ground which produces the materials, is scarce to be reckoned in, as any, or at most, but a very small part of it; so little, *that even amongst us, land that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing.*" (Locke II 42, emphasis added)[785]

Most interpretations of Locke recognize the centrality of his labour theory. But Tully (1980) is an exception; he places priority on the right of creation.[786] Sreenivasan (1995), who usually supports Tully, confirms the important place of labour to be in "straightforward congruence with much of the text."[787]

A recognized question is why labour is necessary. It is generally agreed that labour is the best system for the preservation of mankind because there are not enough products out there in the common for all. With labour, each gets the product to which he or she adds value. So there is a relatively fair division of property from the common, depending on effort. This is the best way to measure the reward for each in accordance with his efforts and labour. In continuation of Simmons's pluralism,[788] I demonstrate below that Locke provides several grounds for the use of labour, all of which are independent.

3.6.1.1 Labour as Necessity of self-preservation

The right of self-preservation implies a positive obligation of mankind to use the products of nature: *"*Every one as he is bound to preserve himself, and not to quit his station willfully*"* (Locke II, 6).[789] Locke explains that once born, mankind has the right of self-preservation and the right to use nature and its products for that purpose: "Men being *once born have a right to their preservation*, and consequently to meat and drink and such other things as nature affords for their subsistence" (Locke II, 25, emphasis added). He further states that "*there must of necessity be a means to appropriate them some way or* other before they can be of any use, or at all beneficial to any particular Man" (Locke II, 26, emphasis added). Locke thought it obvious that consent was unnecessary because otherwise, "*Man had starved*, notwithstanding the Plenty God had given Him" (Locke II, 28, emphasis added). For Locke, labour is thus required by reason based on man's needs for survival, 'penury of his condition required it of him" (Locke II, 32).[790]

3.6.1.2 Labour as a good measurement of value added

Many modern authors call the argument of labour as a good measurement of reward and value the "desert" (from "deserving").[791] For Locke, an individual is the owner of his actions and labour: "The *Labour of his Body* and the *Work of his Hands*, we may say, are *properly his*" (Locke II, 27, emphasis added). Locke then continues, "Whatsoever then he removes out of the State that Nature … and *joined to it something that is his own*, and thereby makes it his

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[785] Locke provides many examples of the value labour adds in land appropriation. See p. 236.
[786] See p. 157.
[787] Sreenivasan, (1995), 60-62, 89. See also Simmons, (1998), 998.
[788] See Simmons's thesis on Locke's pluralism on p. 9. See also p. 157. See also p. 145
[789] See p. 76.
[790] To avoid repetition, see p. 135.
[791] See also Ashcraft, (1986), 264-66, 270, 135-36, 141-142; Perry, (1978), 49; Reeve, (1986), 116-122; Gibbard, (1976), 77-86, cited in Simmons, (1992), 248.

Property" (Locke II, 27, emphasis added). Any object removed from the state of nature becomes useful to men via the labour added to it, which makes the product useful. To reward the labourer, he is given property rights in the object. For example,

> "[I]f we will rightly estimate things as they come to our use, and cast up the several Expenses about them, what in them is purely owing to Nature, and what to labour, we shall find, that in most of them 99/100are wholly to be put on the account of labor *...labour makes the far greatest part of the value of things, we enjoy in this World:* And the ground which produces the materials, is scarce to be reckon'd in, as any, or at most, but a very small, part of it; So little, that even amongst us, Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing." (Locke II, 40-42, emphasis added)

It is thus clear that for Locke, it is labour that adds the "greatest part of value"—99 out of 100. This makes a useless item something useful and of value (Locke II, 36, 37). Labour increases the stock of the common and is the "far greatest part of the value of things" (Locke II, 36, 37, 41, 42, 43).[792]

Without the greater part of labour, such as improvement in land for the common good through tillage or planting, the land could go to waste and retain no value: "he will then see how much labour makes the far greatest part of the value of things we enjoy in this world" (Locke II 42).[793] To Locke, labour is the best way to measure the added value and reward deserved by each in accordance with the amount of labour. One "ought not to meddle with what was already improved by another's labour: *if he did, it is plain he desired the benefit of another's pains, which he had no right to*" (Locke II 34, emphasis added). Labour thus measures the "pain" or effort of each invested in the object of the labour.

This is in agreement with many natural law authors who concur that a good way to encourage a labourer to advance the good of mankind is to give him or her a right in the products of the labour.[794] Some authors such as Ashcraft (1986) add that a right to the products of labour also helps labourers ameliorate the performance of their duties to others.[795] Logically, one is more motivated if he or she has a share in the property that is the subject of labour. Therefore, the labourer has the right to what he has put effort into as a reward. He owns the labour that added value, so it is the labour that made the object useful (Locke II 36, 37, 41, 42, 43). Modern authors point to some difficulties in this argument.

I. It is independent and unrelated to the argument of mankind's preservation.

I argue that this is not necessarily a difficulty. Simmons notes that Locke always gives several grounds for his reasoning, including secular and theological bases.[796]

II. Why the particular products of labour and not other goods within nature?

This is self-evident because in using different objects of labour, it becomes complicated to calculate efforts in proportion to the object of the labour. Using the object of the labour is the simplest way to confer property rights in the object. I cannot see how one could measure

[792] See p. 233.
[793] See p. 142.
[794] See also Reeve, (1986), 116-122; Gibbard, (1976), 77-86, cited in Simmons, (1992), 248.
[795] Ashcraft, (1986), 264-66, 270, 135-36, 141-42; Perry, (1978), 49; Simmons, (1992), 248.
[796] See p. 9.

justly the value of his/her amelioration if he takes a product that is unrelated to the labour. Each wants to see the results of his or her efforts, so it is just to confer rights in that object of labour.

Locke claims that it is human effort or labour that makes objects useful for preservation: "its *Labour* indeed that *puts the* difference of value on everything" (Locke II, 40, emphasis added. See also Locke II 36, 37, 41, 42, 43).[797] Locke insists that labour and cultivation of land increase the value of the land for the common stock: "he who appropriates land to himself by his labour, does not lessen, but *increase the common stock of mankind"* (Locke II, 37, emphasis added). Because labour increases the stock of goods for all mankind, the system of labour also goes along with the preservation of mankind. Simmons (1992) agrees and notes that "it seems, then, that the system that most effectively encourages labor will be likely to be the one that most effectively preserves humankind (and hence does God's will)."[798] I further agree with Simmons (1992) that there are no other goods waiting to be given to mankind. Nature provides only objects that are rough and unfitted to our use. In other words, in nature, there are few objects lying around to be given. There is no unlimited pile of products awaiting our use; thus, appropriating the same product that we ameliorate seems logical.[799] Most modern interpreters agree that labour is the best way to measure the reward deserved by each in accordance with his efforts. This is in agreement with my interpretation of Locke.

3.6.1.3 Labour as the command of God and reason as the voice of God

Locke suggests using labour as the foundation of property rights from the common because the added value of something of one's own is a command of God: "God commanded and (man's) wants forced him to labour" (Locke II, 35). God commanded men to improve the earth for the benefit of life while adding value:

> "God, when he gave the world in common to all mankind, *commanded man also to labour*, and the *penury of his condition required it of him. God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour*…." (Locke II, 32, emphasis added)

God commands that men add something to the object of nature to make them useful for life. Modern authors agree; Ashcraft (1986) says, "It is clear to Locke that 'God intends man to do something' to be active, in short, to labor."[800] In the *First Treatise,* Locke explains that reason is the voice of God and instructs men to self-preserve and use the necessary useful objects of nature with added value:

> "*God himself, reason*, which was the *voice of God in him*, could not but teach him and assure him, that pursuing that natural inclination he had to preserve his being, he *followed the will of his Maker*, and *therefore had a right*... to make use of those things, *that were necessary or useful to his being*" (Locke I, Sec. 86, emphasis added).

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[797] See p. 233.
[798] Simmons, (1992), 248.
[799] Ibid.
[800] Ashcraft, (1986), 262. Citing Locke, (1689), *E.L.N.*, Essay 4, Para. 157; For further support see Dunn, (1969), 219-220, 222-224, 250-251; Wood, (1984), 58; Tully, (1980), 109-110. As within all Locke's arguments referring to God Locke also supports it by reason in that once born labour is necessary for objects of nature to become useful. Further, the ownership of our own movements add value on the object in its original state.

Locke demonstrates the connection between God and reason. God is described as the voice of reason within men. This reason[801] instructs men to labour on objects found within the state of nature so as too improve them for the benefit of life.

Locke used the book of Genesis as a property source, and the book contains this command of God. For Locke, as well as his predecessors, this original grant is considered to be the very source of property law. These basic conditions of property granted by God to His creation include the explanation of the relationship between man and creation, environment, and animals. Locke considers the original grant of God specifically cited in Genesis, *Book of Creation*, ch 1. Sec: 28, 29, 30,[802] and *Book of Creation*, ch 9: Sec 2[803] as the foundation of the property right doctrine.

Locke specifically uses and cites the Genesis within the *Second Treatise*, 25, 31 and the *First Treatise*, 41, 86.[804] The book of Genesis clearly states that "*No shrub of the field was yet in the earth, and no herb of the field had yet sprung up*; for the LORD God had not caused it to rain upon the earth, and there *was not a man to till the ground*."[805] God thus saw no purpose in cultivating vegetation until the creation of man because there was no man "*till the ground.*" The land was worthless without man and his tilling or cultivation—his labour. This is in accordance with Locke's theory that man must cultivate the land for the benefit of the whole to receive any kind of property rights.[806]

The command of God to labour and its connection to reason is also used by Locke's

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[801] For more reference demonstrating God to represent the voice of reason see footnote 19.

[802] See ; Genesis, *Bk. of Creation*, Ch. 1, Sec:

כחוַיְבָרֶךְ אֹתָם, אֱלֹהִים, וַיֹּאמֶר לָהֶם אֱלֹהִים פְּרוּ וּרְבוּ וּמִלְאוּ אֶת-הָאָרֶץ, וְכִבְשֻׁהָ; וּרְדוּ בִּדְגַת הַיָּם, וּבְעוֹף הַשָּׁמַיִם, וּבְכָל-חַיָּה, הָרֹמֶשֶׂת עַל-הָאָרֶץ.

28 And God *blessed them*; and God said unto them: *'Be fruitful, and multiply, and replenish the earth, and subdue it; and have dominion* over the fish of the sea, and over the fowl of the air, and *over every living thing that creepeth upon the earth*.'

כטוַיֹּאמֶר אֱלֹהִים, הִנֵּה נָתַתִּי לָכֶם אֶת-כָּל-עֵשֶׂב זֹרֵעַ זֶרַע אֲשֶׁר עַל-פְּנֵי כָל-הָאָרֶץ, וְאֶת-כָּל-הָעֵץ אֲשֶׁר-בּוֹ פְרִי-עֵץ, זֹרֵעַ זָרַע: לָכֶם יִהְיֶה, לְאָכְלָה.

29 And God said: *'Behold, I have given* you *every herb yielding* seed, which is upon the face of all the earth, and *every tree*, in which is the *fruit* of a tree yielding seed--to you it shall be *for food*;

לוּלְכָל-חַיַּת הָאָרֶץ וּלְכָל-עוֹף הַשָּׁמַיִם וּלְכֹל רוֹמֵשׂ עַל-הָאָרֶץ, אֲשֶׁר-בּוֹ נֶפֶשׁ חַיָּה, אֶת-כָּל-יֶרֶק עֵשֶׂב, לְאָכְלָה; וַיְהִי-כֵן.

30 *and to every beast* of the earth, and to *every fowl* of the air, and to every thing that creepeth upon the earth, *wherein there is a living soul, [I have given] every green herb for food*.' And it was so.

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[803] Genesis, *Bk. of Creation*, Ch. 9, Sec.2: *"...* every beast of the earth, and upon every fowl of the air, and upon all wherewith the ground teemeth, and upon all the fishes of the sea: *into your hand are they delivered"*. Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[804] For a good confirmation see: Forde, (2006), 232-258 and; Olivecrona, (1974), *Locke's Theory of Appropriation Source*, 220-234, entire article.

[805] Genesis, *Bk. of Creation*, Ch. 2, Sec. 5, emphasis added:

הוְכֹל שִׂיחַ הַשָּׂדֶה, טֶרֶם יִהְיֶה בָאָרֶץ, וְכָל-עֵשֶׂב הַשָּׂדֶה, טֶרֶם יִצְמָח: כִּי לֹא הִמְטִיר יְהוָה אֱלֹהִים, עַל-הָאָרֶץ, וְאָדָם אַיִן, לַעֲבֹד אֶת-הָאֲדָמָה.

5 "*No shrub of the field was yet in the earth, and no herb of the field had yet sprung up;* for the *LORD God had not caused it to rain upon the earth*, and *there was not a man to till the ground*;"

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[806] "In the sweat of thy face shalt thou eat bread, *till thou return unto the ground; for out of it wast thou taken; for dust thou art, and unto dust shalt thou return*" (emphasis added, Genesis, *Bk. of Creation* , Ch. 3. Sec 19). God also reminds mankind that they came from the ground and shall return to it. The ground came first (Genesis *Bk. of Creation*, Ch. 2, Sec 6) before men (Genesis, *Bk. of Creation,* Ch. 2, Sec 7). See References p. 239. Men are to preserve it, cultivate it, and make the best of it, for the best for the common good, including animal life.

predecessors. They thought it the will of God that man could possess something on the earth as his own. Pufendorf states that natural law was founded both upon the rule of reason and the positive command of a superior.[807]

Ashcraft (1986) shows that to Locke, "It does not seem to fit in with the wisdom of the creator to form an animal that is most perfect and ever active, and to *endow it abundantly above all others with mind, intellect, reason, and all the requisites for working, and yet no assign to it any work"* (emphasis added).[808] I agree with this view that it seems to be against logic to have created men with reason and intellect without the desire to put it to use.

3.6.1.3.1 Conclusion

Basic property rights derive from man's ability to labour for that which he owns (Locke II, 27). The products of nature are not useful without the employment of labour (Locke II, 36, 37, 40, 41, 42, 43). An example is eating fruit from a tree found in nature. To make the fruit useful for survival, man must labour in a simple way to make it his. The man must pick the apple from the tree using his hands, bite into it, and use his teeth to chew it. Further, he needs his digestive system to receive the vitality and satisfaction to improve his organs. Without these actions, the fruit would be useless to ensure man's survival. To Locke, *"Bread, wine and cloth, are things of daily use, and great plenty; yet notwithstanding, acorns, water and leaves, or skins, must be our bread, drink and clothing, did not labour furnish us with these more useful commodities*: for whatever bread is more worth than acorns, wine than water, and cloth" (Locke II, 42, emphasis added).[809] To Locke, without man's labour, the simplest products in nature would not be of much use. They might waste or perish for lack of use or consumption. As we see later on within Locke's limits, a wasted product violates the law of nature: "[I]f either the *grass of his enclosure rotted* on the ground, or the *fruit of his planting perished without gathering*, and laying up, this part of the earth, notwithstanding his enclosure, was *still to be looked on as waste, and might be the possession of any other*" (Locke II, 38, emphasis added).[810] The act of taking an object from its state of nature and changing it adds value. This gives property rights in this object.

Labour entails using bodily movements and actions on a product of nature while adding value to it. Locke's grounds for property rights are independently valid yet coexist: the use of labour for self-preservation, the reward for added value, and God's will as the voice of reason. Simmons's argument that Locke provides several foundations for his theory is confirmed[811] in that Locke provides several theological grounds. God commands labour, and God is the voice of reason within men. For the secular ground reason instructs men, on the basis of the need for preservation, to labour and add value to a product of nature to make it beneficial for life.

3.6.1.3.2 The misunderstanding of the literal labour-mixing theory

Some modern interpreters refer to Locke's "labour-mixing theory" (see Locke II, 27). As such, some authors such as Waldron (1988) see a literal mixture of labour and objects—yet

[807] Pufendorf , (1672), *De Jure Naturae*, Vol. II, Lib. 4, Cap. 4.
[808] Ashcraft, (1986), 261-62, citing Locke, (1689), *E.L.N.*, Essay 4, Para. 117; For further support, see Dunn, (1969), 219-220, 222-224, 250-251; Wood, (1984), 58; Tully, (1980), 109-110.
[809] See p. 142; p. 150.
[810] See the no waste limit, p. 215.
[811] See p. 9.

actions cannot mix with objects.[812] Waldron explains that it is impossible to mix an object with actions for only objects can be mixed with other objects: "Surely the only things that can be mixed with objects are other objects. But labour consists of actions not objects."[813] He further explains that

> "even if we assume, for a moment that the idea of a mixing labour makes sense, still once the mixing takes place the labour is to all intents and purposes lost in the object. Once mixed, it no longer exists as labour and there is no longer a question of protecting anyone's entitlements to it."[814]

For Waldron, the moment the labour is mixed, the action of labour is subsumed by the object, so there is no need to protect the entitlement. After mixing the labour, one cannot use this same labour, for it is lost. As such, the right to the improved object cannot properly protect the right to the labour that was lost. Waldron uses the example of tomato juice in Nozick (1974):

> "[W]hy isn't mixing what I own (my labor) with what I don't own a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do i thereby come to own the sea, or have I foolishly dissipated my tomato juice?"[815]

In other words, Waldron and Nozick turn the labour theory upside down. For them, Locke implies that one might lose the labour while using it. This would mean that property rights in the object cease once it is used. Nozick (1974), with the support of Waldron and other followers, uses the example of the tomato juice above.[816] Waldron adds we can "lose" labour when it leads to no success, so why not in other cases? He claims that the moment the labour is freely used, it is no longer a violation of liberty to take the object of the labour because we cannot control labour after it is mixed. It is lost.[817]

I argue that the tomato juice example is inappropriately applied to Locke. First, the sea is recognized by Locke as well as his predecessors to have always been a common property free to all users: "Ocean, that great and still remaining Common of Mankind" (Locke II, 30). It cannot thus be owned or appropriated in any way. This can also be found in Grotius: "Notwithstanding the statements above made, it must be admitted that *some things are impossible to be reduced to a state of property*, of which the *Sea affords us an instance* both in its general extent, and in its principal branches."[818]

Secondly, Locke's labour theory does not refer to an action like dumping a can of tomato juice into the sea. That would be wasteful on the part of the appropriator and would lead to spoilage of the tomato juice from non-use (Locke II, Locke II, 31, 36, 37, 38, 46, 48, 51)[819] and even spoilage of the common (the sea) unless the action causes no harm (or provides food

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[812] Waldron, (1983), 37, 40-41 and Waldron, (1988), 184-191; see also Simmons, (1992), 267.
[813] Waldron, (1988), 185.
[814] Waldron, (1988), 188.
[815] Nozick, (1974), 174-175. See Waldron, (1983), 42; see also Sartorius, (1984), 204; Becker, (1977), 40-41. Also within Simmons, (1992), Ch. 5.
[816] Hume, (1978), 11, 209; see also Nozick, (1974), 174-175.
[817] Waldron, (1983), 43-44.
[818] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 3, Para. 1, emphasis added.
[819] See Locke's limitation of no spoilage p. 215.

for the fish, for example). Locke's examples of labour are all examples of actions that add value of some kind to an object found in the state of nature.[820] The example above thus takes Locke's definition of labour out of context. Ashcraft (1986) notes that "[p]eople should be accustomed from their cradles to spoil or waste nothing at all." The "spoiling of anything to no purpose" is nothing less than "doing of mischief."[821]

I further as part of my central thesis that for Locke, appropriation is justified for self-preservation and preservation of others if natural law limits prevent acting for self instead of the good of the whole.[822] I thus join Ashcraft (1986) in that Locke's labour must always be allied to the "advancement of the public good": "For Locke, *Laboring activity, in other words, is never detached from its conjunction with the advancement of the public good"* (emphasis added).[823] There is no valuable addition to the common or the preservation of self by dumping tomato juice into the sea. It is thus a waste of both the juice and the sea.

Many modern authors answer this literal mixture by noting that one cannot lose that which is his or her own. The labour belongs to the person, and he cannot lose it but one can add it to objects. Simmons (1992) says we cannot lose what we own because this same thing we own is never separated from our being. As such, the taking of the improved object that was laboured on is a violation of the right of self-government.[824]

I further object to this critique of Locke's labour theory because Locke could not have meant a literal mixture. In using labour on an object, one adds his own value through his own actions "and *joined to it something that is his own*, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it" (Locke II, 27, emphasis added). Simmons (1992) agrees that a literal mixture is "now replaced with a perfectly intelligible notion of mixing labour."[825] He thus confirms that today it is recognized that Locke's labour theory did not refer to a literal mixture.[826]

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[820] See actions considered labour on p. 150.

[821] From Ashcraft, (1986), 268, citing Locke STCE.

[822] See chapter on natural law limits on p. 210.

[823] Ashcraft, (1986), 270 citing Locke's (1677) discussion in his Journal. See more on Ashcraft, (1986), within Modern debate on Locke's common good p. 102 and following and in general, p. 100 and following

[824] Simmons, (1992), 267.

[825] Simmons, (1992), Ch. 5.3, 274-275.

[826] Being less relevant to my thesis, I refer interested readers to a detailed discussion of other common objections to Locke's labour theory in Simmons, (1992), Ch. 5.3.: (1.) Why does a mixing theory give full ownership of the object, which includes the right to exclude others and transfer it, instead of a simple right to use the object? (argued by Perry, (1978), 52; and, Waldron, (1983), 42). I agree with Simmons's answer that if others are excluded from the object, then the labourer is more protected in his rights in the object so that it cannot be taken from him (Locke II, 27, 32). (2.) Another objection raised by Plamenatz, (1963), involves why another act of labour on the same object cannot give rise to another property right equivalent to that enjoyed by the first labourer while the second labourer may be more productive (Plamenatz, (1963), Sec. 1, 246-247). Here, I answer that Locke, based on Grotius's seizure and Roman law, has based the property theory on the right in the object to the first occupier (see p. 153). (3.) Day, (1966), sees cooperation as a difficulty for Locke's property theory due to the complexity in deciding the level of joint effort invested in accordance with the efforts and skills of the various parties' labour (Day, (1966), 210-211). Simmons answers that Locke's property rights via labour do not mention cooperation except that established by the agreement of the parties. According to Simmons, for Locke, joint labour (with no prior consent) would produce joint property, with a later division (if any) decided on the basis of consent or natural fairness, based on marginal productivity. (4.) An additional objection to Locke's labour theory arises from conventionalists or utilitarians basing their foundation of government solely only on consent and conventions. They assert that property can have no basis in natural law. Yet Simmons claims that

3.6.2 What acts might be considered labour

Labour to Locke could be as simple picking something off of the ground. No exact definition is provided. However, Locke gives several examples to demonstrate its meaning, using both movables and land.

3.6.2.1 Appropriation of Movables

The appropriation of movables is described in Locke (II, 26–31). Locke sees this appropriation as the physical act of seizure or taking possession for the purpose of using the object. Locke uses the example of picking acorns from an oak:

> "*He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his*. I ask then, *when did they begin to be his*? when he *digested*? or when he *eat*? or when he *boiled*? or when he *brought them home*? or when he *picked them up*? and ***it is plain, if the first gathering made them not his, nothing else could***. That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say, he had no right to those acorns or apples, he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? *If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him*. We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use. *And the taking of this or that part, does not depend on the express consent of all the commoners.* Thus the *grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of any body*. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them." (Locke II, 28, emphasis added).

This is a very clear reference to the meaning of labour; Locke explains that it is the taking possession or "first gathering" of the object from nature that makes the object one's own. All the actions that come afterwards are secondary. The first action that changes the object from its state of nature makes it his own. He then demonstrates other examples: a horse eating grass; cutting the turf; digging for ore. In the next paragraph, Locke provides examples like drawing water from a public fountain (Locke II, 29) and catching a fish "in the Ocean, that great and still remaining Common of Mankind" (Locke II, 30). Locke then asks whether one can really doubt that these objects being appropriated belong to the appropriater. Locke appeals to common sense and states that "Nobody can deny but the nourishment is his" (Locke II, 28). In Locke's words,

> "Even amongst us the Hare that any one is Hunting, is *thought his who pursues her*

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conventionalists can ground property rights independently, in both positive law and natural law. I agree and add that as already demonstrated within this thesis, the conventionalists have no moral guarantee of the preservation of individual rights (For additional counterarguments, see p. 209, footnote 425 and footnote 135). Locke holds that the preservation of mankind is the purpose of the natural law (Locke II, 7), and natural law can best guarantee the preservation of the whole and its individuals (see p. 26).

> during the Chase for being a beast that is still looked upon as common, and no man's private possession; whoever has *employed so much labour about any of that kind, as to find and pursue her*, has thereby removed her from the state of nature, wherein she was common, and hath *begun a property*." (Locke II, 30, emphasis added)

For any movable object from the common, something as simple as "*find and pursue*" could be labour—the "*first* gathering made them not his, nothing else could" (Locke II, 28, emphasis added). This is not highly relevant to my central thesis, but Locke's definition of labour as a foundation of property rights can be partially found in the Roman natural law and in Grotius's seizure of objects from the common by occupation.

3.6.2.1.1 Grotius' "occupation" based on Roman law

Grotius took from Roman law the acquisition of property by "occupation,"[827] the act of seizure that gives and validates property rights in an object.

> "All things, as Justin says, formed a common stock for all mankind, as the inheritors of one general patrimony. From hence it happened, *that every man seized to his own use or consumption whatever he met with; a general exercise of a right, which supplied the place of private property. So that to deprive any one of what he had thus seized, became an act of injustice.*"[828]

According to Home (1990), "it is important for the history of property rights that Grotius thought that a right could be created simply by the individual's seizure."[829] But Pufendorf finds it impossible to appropriate things that are useful for life preservation. Any sort of appropriation derives from human will so rights cannot be created via simple seizure. Any use of things from the common requires a mutual agreement to exclude others from using the same thing: "it is impossible to conceive how the mere corporal act of one person can prejudice the faculty of others, unless their consent is given."[830]

Indeed, Grotius's possession from the common does not exclude anyone else from using the same object, but as the same object cannot be used in the same manner at the same time by another, it follows that at a minimum, "All things belonged to him who had possession of them."[831] This form of property rights from the common thus does not properly protect the first one who seized the object. For Grotius, it is the first act of seizure or occupation and the demonstration of the intention to use and alter and object that creates rights. There must be a certain act accompanying the will to own the property, and the act of seizure or "occupancy" will be sufficient to create certain property rights in the object from the common:

> "[W]e learn how things passed from being held in common to a state of property. It was *not by the act of the mind alone that this change took place. For men in that case could never know, what others intended to appropriate to their own use*, so as to exclude the claim of every other pretender to the same; and many too might desire to possess the same thing. *Property therefore must have been established* either by express agreement, *as by division, or by tacit consent, as by occupancy.*" (emphasis

[827] See references to Roman law on p. 153.
[828] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 1. (emphasis added).
[829] Home, (1990), 12.
[830] Pufendorf, (1672), *De Jure Naturae*, Vol. 2, Lib. 4, Cap. 4, Para. 5. See p. 131 withing this thesis.
[831] Grotius, (1609), *Mare Liberum*, Ch. 7, Para. 24.

added)[832]

However, for Grotius, a general agreement must still be made with the commoners to accept this rule of first seizure. If all do not agree, then the property is in danger. For him, unrestricted private property right can only be based on mutual agreement. [833]

Tuck (1979) objects and argues that for Grotius, "the *general principle of occupation was not taken to be conventional*." He explains that for Grotius, while private property did not exist in the state of nature, the rights, although not strictly property rights, "*were not categorically dissimilar*." As a result, "There was something *natural in the development into the institution of private property* of the basic and inherent human right to use the material world, and no agreement was ever necessary." Rather, "*all that was necessary was labour of some kind. Men had physically to take possession of the material object, or to alter or define it in some way.*"[834] Tuck thus explains that for Grotius, consent is not the only basis of property rights. The act of seizure or occupation is also a basis (and altering the object in some way from its original state in nature while adding something of his "own").[835] In that sense, Grotius's "occupation" can very well be considered the origin of Locke's meaning of labour.[836]

I add that for Grotius, occupation is a form of tacit consent: "At the same time, we learn how things passed from being held in common to a state of property….Property therefore must have been established either by express agreement, as by division, *or by tacit consent, as by occupancy.*"[837] Even Grotius avoids the strict meaning of "compact." Tacit consent "as by occupancy" is thus specifically considered by Grotius as an option for a general expressed compact.[838]

However, for Grotius, some sort of agreement is necessary even for occupancy: "before any division of lands had been established, *it is natural to suppose it must have been* ***generally agreed****, that* ***whatever any one had occupied*** *should be accounted his own.*"[839]As such, it cannot really be compared to Locke's labour, which solves the great difficulty of gaining rights from the common protected by natural law without the need for general agreement.

Grotius's seizure thus cannot confer the same right of exclusion of others as Locke's labour-based property rights do; however, Locke could have been inspired by the limited property rights raised by the first seizure as the action was sufficient to confer a right in property. It is not important to my central thesis but works to support partially Locke's labour theory.

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[832] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 6.
[833] Grotius, (1625), *War and Peace*, Bk. II, Ch. 17, Sec. 2, Para. 1.
[834] Tuck, (1979), 61, emphasis added.
[835] Olivecrona, (1974) notes that Locke's appropriation cannot be entirely compared to Grotius's "occupation" as occupation can only take place with regard to things that belonged to no one (*res nullius*) unless convention and agreement dictate otherwise. For Olivecrona, an act of occupation demands that the object occupied not belong to anyone. Locke's appropriation aim bases property rights on the state of nature without the need for human convention. So Olivercrona notes that the final basis of Grotius's private property rights is convention whereas for Locke, it is his labour theory. Olivecrona, (1974), *Appropriation in the State of Nature*, 225.
[836] Grotius, (1609) notes that for objects that are resistant to seizure, such as wild animals, an actual physical possession must be perpetually maintained on a continuing basis (Grotius, (1609), *Mare Liberum*, Ch. 7, Para. 25-26). If a wild animal escapes, the natural inference of abandoning ownership causes the ownership to be lost. However, it is possible to attach a mark to the animal to demonstrate the intention to maintain ownership and to recover the possession. Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 3.
[837] Emphasis added. Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 6.
[838] See tacit consent on p. 45.
[839] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 6, emphasis added.

3.6.2.1.2 Roman law on acquisition from the common

Traces of the occupation of objects from the common can be found in Roman law.

> *"1.* We *obtain the ownership of certain property* by the Law of Nations, which is everywhere observed among men, *according to the dictates of natural reason*; and we obtain the *ownership of other things by the Civil Law*, that is to say, by the law of our own country. *And because the Law of Nations is the more ancient, as it was promulgated at the time of the origin of the human race, it is proper that it should be examined first.*
>
> (1) Therefore, *all animals* which are captured on land, on sea, or in the air, that is to say, *wild beasts and birds, as well as fish, become the property of those who take them* . . . ." (emphasis added)[840]

Here, it is suggested that there are property rights that can be deduced from the law of reason and that can become property by the mere taking from the common. This is similar to Grotius's thinking.

> "*For what does not belong to anyone by natural law becomes the property of the person who first acquires it*.
>
> (1) Nor does it make any difference, so far as wild animals and birds are concerned, whether anyone takes them on his own land, or on that of another; but it is -clear that if he enters upon the premises of another for the purpose of hunting, or of taking game, he can be legally forbidden by the owner to do so, if the latter is aware of his intention. (2) When we have once acquired any of these animals, they are understood to belong to us, as long as they are retained in our possession; for if they should escape from our custody and recover their natural freedom, they cease to belong to us, and again become *the property of the first one who takes them.*" (emphasis added)[841]

Here, Roman law speaks on property rights based on natural law; the first acquisition of the property confers those rights. Roman law thus also agrees that according to natural law, all things that do not belong to anyone become the property of the first who takes them.

> "*Possession*, as Labeo says, is derived from the term sedes, or position, *because it is naturally held by him* who has it; and this the Greeks designate . . .
>
> (1) Nerva, the son, asserts that the *ownership of property originated from natural possession*, and that the trace of this still remains in the case of whatever is taken on the earth, on the sea, and in the air, for it immediately belongs to those who first acquire possession of it. Likewise, spoils taken in war, and an island formed in the sea, gems, precious stones, and pearls found upon the shore, *become the property of him who first obtains possession of them.*" (emphasis added)[842]

Here too, Roman law insists on the natural law origins of property rights. It demonstrates

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[840] Justinian, (533 AD), Bk. 41, Title 1, Sec. 1 and 1 (1); *Concerning the Acquisition of the Ownership of Property*.

[841] Justinian, (533 AD), Bk. 41, Title 1, Sec. 3 (1) and (2). See similarity to Grotius on animals p. 152 of this thesis (footnote 836).

[842] Justinian, (533 AD), Bk. 41, Title 2, Sec. 1 and 1 (1); *Concerning Acquiring or Loosing Possession. 1. Paulus, On the Edict, Book LIV,*. Bk. 41, Title 2, Sec. 1.

again that the first taking is the important act giving rise to property rights.

Roman law also recognizes natural law deriving from reason given to each human; the first property rights derive from natural law and the first taking. This, together with Grotius's references above, demonstrates that Locke is certainly not the first to relate property rights to natural law and reason. However, it is clear that Locke's labour theory is unique in developing the idea of first acquisition and giving a rational explanation of how one may have property rights in objects found in the common if he or she added value to it via personal movements/actions (Locke II, 27).

3.6.2.1.3 Appropriation by consumption

Some claim that Locke's argument in which he "tries to reason backwards from the obviousness of our property in the ingested good to cover less obvious property in things only taken from common" is "confused."[843] But Locke's own words only ask when the property right begins—at digestion, while eating, or when taking the object? "I ask then, *when did they begin to be his?* when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up?" (Locke II, 28, emphasis added). Locke directly afterwards answers his own question: "[I]t *is plain, if the first gathering made them not his, nothing else could*" (Locke II, 28, emphasis added). He never intended to presuppose ingestion as an independent right in property. Locke merely uses it as an example to show that the property right is given when the fruit is taken from the common while infusing something of one's own in it.

The confusion might come from Grotius, to whom some specific consumables like food and drink "consist[] in their being used up" and as such, their use becomes inseparable "from any kind of ownership" because to "own" implies "that a thing belongs to some one person in such a way that it cannot belong to any other person."[844] In other words, the fruits disappear upon consumption. This does not allow anyone else the possibility of using it. By being fused to the owner, the use of the fruit becomes inseparable from the possession. As a consequence, some authors might interpret Grotius to mean that consumable objects from nature have an independent ground of property by them being used up in such way that they could not be used by someone else afterwards.

But Grotius demonstrated a basis for property rights through seizure of the object from the common: "every man seized to his own use or consumption whatever he met with; a general exercise of a right, which supplied the place of private property. So that to deprive any one of what he had thus seized, became an act of injustice."[845]

Simmons (1992) made it clear that the incorporation into the body cannot be an independent basis for property rights. Incorporation first requires valid appropriation.[846] This problem of appropriation by consumption or digestion is not relevant because for Locke, the first act of taking the object from the common makes the object one's own (Locke II, 28). This first taking is not something new; it is confirmed by earlier authors of natural law, as demonstrated by Roman law and Grotius.

[843] Simmons, (1992), Ch. 5.3. on Locke II, 28.
[844] Grotius, (1609), *Mare Liberum*, Ch. 7, Para. 24.
[845] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 1. (emphasis added).
[846] Locke II, 28, see Simmons, (1992), Ch. 5.3.

3.6.2.2 Appropriation of land

When it comes to land, Locke's definition of labour includes continuing amelioration and cultivation of the land for the benefit of the common stock. Locke speaks of land as "the chief matter of Property" or, the "the Earth itself; as *that which takes in and carries with it all the rest*" (Locke II, 32, emphasis added). Locke starts his discussion on land by stating that "property in that" (Locke II, 32) could be appropriated in the same way as moveables—by introducing something of one's personality while adding value. For Locke, annexing something out of one's labour adds an aspect of one's personality to the land. As a result, it becomes that person's property as long natural law limitations are obeyed.

Locke supports property rights in land but here the definition of labour includes the continuing cultivation of land for the common good. I argue that for land, more than for movables, there is a clear and specific emphasis on the vocabulary used with the improvement of the land:

> "God and his *Reason* commanded him [man] *to subdue the Earth, i.e. improve it for the benefit of Life*, and therein *lay out something upon it that was his own, his labour*. He that in Obedience to this Command of God, subdued, *tilled and sowed any part of it, thereby annexed to it something that was his Property*, which another had no Title to, nor could without injury take from him." (Locke II, 32, emphasis added)

The word labour implies more than a simple physical taking of the object, as with movables. Here, Locke uses the words like tilling, planting, and cultivating. "As much land as a man *tills, plants, improves, cultivates* and can use the product of, so much is his property" (Locke II, 32, emphasis added). Locke also demonstrates that the word "subdue" as used in Genesis implies amelioration for the benefit of life.

Locke emphasises that the owner of some property rights in land will lose his rights as soon as he stops cultivating the land for the common good. Thus, a continuing cultivation and amelioration of the land for the common good is a necessary condition of its limited appropriation:

> "by placing any of his labour on them, did thereby acquire a propriety in them: but *if they perished, in his possession, without their due use*; if the fruits rotted, or the venison putrified, before he could spend it, *he offended against the common law of nature*, and was liable to be punished; he invaded his neighbor's share, for he had no right, farther than his use called for any of them, and they might serve to afford him conveniences of life." (Locke II, 37, emphasis added)

"The same measures governed the possession of land too: whatsoever he *tilled* and *reaped, laid up and made use of*, before it spoiled…" (Locke II, 38, emphasis added).[847] Again, Locke provides another independent ground for property rights in land on the independent authority from God. God authorised the appropriation of land (Locke II, 35): "God, by commanding to subdue, gave authority so far to appropriate: and the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions" (Locke II, 35).

Locke also explains that the meaning of "subdue" is the improvement of the land for the benefit of life:

[847] See more on limits on land on p. 233.

> "*God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour*. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him." (Locke II, 32, emphasis added)

This meaning can be explained by the Genesis: "*No shrub of the field was yet in the earth, and no herb of the field had yet sprung up;* for the LORD God had not caused it to rain upon the earth, and there *was not a man to till the ground"* (Genesis, *Book of Creation*, ch 2. para 5, emphasis added)[848]. God thus saw no purpose in growing vegetation until the creation of man because there was no man "*till the ground*." Land is worthless without man and its tilling and cultivation or labour. Locke also holds that man must work and cultivate the land for the benefit of the whole to obtain property rights in it.

The Genesis also states, "Therefore the LORD God sent him forth from the garden of Eden, *to till the ground from whence he was taken.*" (emphasis added)[849] God demonstrates a clear desire for man to "till" the "ground" from whence he sprung so that he can enjoy. God's curse on the ground creates the relationship between man and nature: Humans have only themselves to blame for their hostile nature. Further, for Locke, "he who appropriates land to himself by his labour, does not lessen, but *increase the common stock of mankind*" (Locke II, 37).[850]

3.6.2.2.1 Enclosure of land or marking its boundaries

The enclosure of the land or the marking of its boundaries is another essential element in the appropriation of land. For private property to be maintained, occupation or seizure is not sufficient. An intention to maintain possession must be demonstrated. It seems logical to infer that in order to cultivate land, a man must first make it his own by enclosing it. For Locke, the enclosure of the land and continuing cultivation were obligatory for any kind of appropriation.

A movable thing has boundaries based on its existing physical shape, but a piece of land has no physical shape unless it is marked off by boundaries. As a result, it is usually a prerequisite to mark off approximate boundaries before land is appropriated. In several passages of Locke's texts, enclosure is identified with appropriation. "He [the occupant] by his Labour does, as it were, *inclose it from the Common*" (Locke II, 32, emphasis added).

In order to cultivate a land, a man has to first enclose it.

> "It is true, in land that is common in England, or any other country, where there is plenty of people under government, who have money and commerce, *no one can inclose or appropriate any part, without the consent of all his fellow commoners; because this is left common by compact, i.e. by the law of the land*, which is not to be violated. And though it be common, in respect of some men, it is not so to all mankind; but is the joint property of this country, or this parish. Besides, *the remainder, after such enclosure, would not be as good to the rest of the commoners*, as the whole was

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[848] Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[849] Genesis, *Bk. of creation*, Ch. 3, Sec. 23:

כג וַיְשַׁלְּחֵהוּ יְהוָה אֱלֹהִים, מִגַּן-עֵדֶן--לַעֲבֹד, אֶת-הָאֲדָמָה, אֲשֶׁר לֻקַּח, מִשָּׁם.

23 Therefore the LORD God sent him forth from the garden of Eden, to till the ground from whence he was taken.

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[850] To avoid repetition, see p. 233.

> when they could all make use of the whole; whereas in the beginning and first peopling of the great common of the world, it was quite otherwise. The law man was under, was rather for appropriating. God commanded, and his wants forced him to labour. That was his property which could not be taken from him where-ever he had fixed it. And hence subduing or cultivating the earth, and having dominion, we see are joined together." (Locke II, 35, emphasis added)

Here too the enclosure of the land is clearly mentioned as a necessary condition to the appropriation of land. One can "inclose" any part. For another example of enclosure when it comes to land see; "The *same measures governed the possession of land too: whatsoever* he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; *whatsoever he enclosed, and could feed, and make use of* "(Locke II, 38, emphasis added). Here too, the vocabulary used implies specific 'enclosure' of the land.

Locke's natural law-based appropriation of land requires both enclosure (the marking of boundaries) and the continuing cultivation with the purpose of increasing the common stock. Locke requires the specific order of enclosure first and then cultivation. The enclosure of the land and its continuing cultivation are obligatory for any kind of appropriation. This need to maintain possession is confirmed by Pufendorf and Grotius.[851]

3.6.3 The role of Right of Creation in Locke

As seen above, most of Locke's interpreters concentrate on the labour argument as Locke's fundamental justification for unlimited property rights. As such, there are debates on the right of creation within Locke.[852] The central place of the right of creation is mainly related to Tully (1980) and his followers.[853] He claims that Locke's labour theory is only a device to demonstrate the transition from the rights in the state of nature to those in a political

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[851] For Grotius, (1609), the continuation of ownership rights necessitates that after the original act of seizure, maintained intention to possess is demonstrated. With regard to movables, the actual possession implies seizure. When it comes to land, intention to own is maintained either by *"*the erection of buildings or some *determination of boundaries*, such as fencing in*"* (Grotius, (1609), *Mare Liberum*, Ch. 2, Para. 169 and Ch. 3, Para. 105, emphasis added). Mere discovery and seizure of land is not sufficient. It is even unjustified unless supported by a continued intention to continue ownership by barriers. For Grotius, creation of property rights by agreement can only be valid as long as the intention to hold the property is demonstrated, in some way or another. In the case of land, the marking of barriers is an indication of this intention. However, possession should happen '*peacefully, with common consent of those who were present, without the opposition of anyone*' (see Gortius, (1609), Ch. 2, Para. 169).

This is also seen within Pufendorf, who holds that for the appropriation of land, a cultivation and the marking of the land's boundaries are required (Pufendorf, (1672), *De iure Naturae*, Vol. IV, Lib. 6, Cap. 3 and 8). See Olivecrona, (1974), *Locke's Theory of Appropriation*, 228.

A modern interpreter of Grotius, Knight, (1919), summarises Grotius' position on land seizure as follows: "With regard to *title to newly discovered lands.* Sovereignty over such shall be acquired, where there is no valid agreement with the native authorities, only by taking the most real and positive possession. *Mere 'seizure with the eves' is insufficient* (h). Where fore, if we follow Grotius, the modern theories and practice of spheres of influence, and hinterlands, are entirely without foundation in justice. *Nor, in the case of inhabited lands, is mere discovery a good title, for at the time of the discovery the lands could not be res nullius, but actually owned by the natives*. Arrogation of sovereignty on the pretext of elevating the native civilization is absolutely unjustified." (Knight, (1919), 9-11, emphasis added)

[852] Tully, (1980), 116-121; Shapiro, (1986), 96; Colman, (1983), 186-190. See references from Simmons, (1992), 256.

[853] Tully, (1980), 4, 8-9, 105, 108-110, 116-121. See also Shapiro, (1986), 96 and; Colman (1983), 186-190. See references from Simmons, (1992), 256.

society.[854] Tully holds that labour only gives a right of use in the property for means of preservation. This does not include the right of alienation or exclusion. If the current property holder is not using it, the property will be spoiled, which violates natural law.[855] Tully sees Locke's rights to life, liberty, and property as inalienable rights for the preservation of God's property that include positive duties to preserve self and others. As a result, Tully, unlike most of Locke's interpreters, does not see labour as Locke's central justification for property rights.[856]

Tully argues that property rights arise from the connection between God and human creations: "[A] maker has a right in and over his workmanship."[857] Because man was created in the image of God, he shares the ability to mould his physical environment.[858] Tully explains that if God has property rights in humankind as their creator, humans have property right in what they create: "God as maker has a special duty in man as his workmanship."[859] This obligation seems to derive partly from the divine wisdom of the law-maker, and partly from the right which the Creator has over His Creation."[860]

Tully claims that one who adds a value using labour to God-given common materials has a right in the product of the labour as it did not exist before the intervention. Tully explains that Locke sees actions like hunting, agriculture, and gathering as activities transforming "earthy provisions" into "man-made objects of use."[861] He uses the example of a cultivated land (Locke II, 32)[862] that is ameliorated by labour.[863] Tully further explains,

> "It does not seem to be Locke's view that a person mixes his labour with a preexisting object which persists thought the activity of laboring. *Rather, he sees the laborer as making an object out of the material provided by God and so having a property in this product, in a manner similar to the way in which God makes the world out of the prior material He created*." (emphasis added)[864]

Tully thus clearly compares God's creation to mankind's and thinks that for Locke, man acquires property rights in this way.

I support the modern objection to Tully's interpretation in that indeed there is a great difference between man's ability to add value to something created by God to make it useful and his ability to create something new. Simmons (1992) notes that it is difficult to see how picking up a fruit is comparable to God's act of creation.

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[854] Tully, (1980), 116-124. Tully distinguishes between inclusive and exclusive rights of property. An inclusive right is a right to share the property that God had given to all men in common (Tully, (1980), 61). An exclusive right is a right that excludes everyone but the property holder from the enjoyment and use of the property. The latter is the product of political society and as such is not based on natural law but rather on human consent. Tully emphasises that exclusive rights are overridden when inclusive rights are threatened. The inclusive right for an equal share of the common property overrides the exclusive right deriving from labour. (Tully, (1980), 112-116).

[855] See analysis on Tully and alienation of property rights on p. 129.

[856] Tully, (1980), 104-124.

[857] Tully, (1980), 42.

[858] Tully, (1980), 40.

[859] Tully, (1980), 42.

[860] Tully, (1980), 40.

[861] Tully, (1980), 117.

[862] See p. 155.

[863] Tully, (1980), 116-119; see also Sreenivasan, (1995), 80; Simmons, (2008), 997-999.

[864] Tully, (1980), 116-117. For more analysis, see Simmons's objections below.

Tully supports Sreenivasan's (1995) "superior interpretation" under which

> "labor grounds property in terms of labor's making new things. Makers have rights over their creations. God has rights over what he creates (i.e., makes ex nihilo), and man has rights, by analogy, over what he makes (from pre-existing materials) (pp. 62-64, 74-76). Makers' rights are, on this reading of Locke, simply 'self-evident' (pp. 62, 72); and we should read Locke's references to labor-mixing as a 'metaphor' for the maker's right doctrine (p. 89)."[865]

In my review of Locke, I further support Simmons (1992) that there is almost no textual evidence to support the doctrine of creation in such way that humans can create new things as does God. Simmons criticizes Tully's reading of Locke and says that Tully's far-reaching conclusions assume that humanity can create on the same level as God and has rights similar to those of the Creator.[866]

Waldron (1988) joins the line against Tully and finds that

> "Make' and its cognates are used in three main senses in the chapter on property: 1. 'To make use of something' is the most common usage (Locke II, 31, 36, 38, 43, 45, 46, and 51); 2. 'making something one's property' is common in early paragraphs (Locke II. 25,27,28,30, and 31); and 3. Locke says in several places that labour 'makes up' the greater part of the value of artifacts (Locke II. 20.24, and 44). I guess this last usage is the closest to the one that Tully wants, but even so it is quite a distance from the idea of making or creating an object".[867]

Waldron thus demonstrates that Locke's use of the verb "make" does not align with Tully's argument as it never approaches the creation of an object.

Tully himself recognises that Locke does not use the word "create," yet he continues to defend his position by referring to Locke's constant use of the word "making." "It is *right to say that Locke does not use the word 'create'; this is confined to God's act (2.26.2).* Yet, as I hope I have shown, he does use the word 'make' consistently and repeatedly to signify man's ability to change natural things into useful goods" (emphasis added).[868]

Waldron (1988) also confirms that Tully recognises that Locke never clearly raises the idea of a creator's rights to explain appropriators' entitlements.[869] He only says that Locke uses the word "make" consistently to indicate man's creative activity.[870] Waldron then discusses the difference in the verbs "create" and "make."[871]

I join these critics of Tully; there is a great difference between "create" and "make," evident

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[865] Simmons, (1998), 997-999. Tully also bases this on Locke's Essay IV.X.I9, in which he argues that if we accept the fact that our immaterial mind orders physical movements, we are not allowed to reject some other inexplicable things like the doctrine of creation. Macolm, (1982) replies that this specific text cited does not compare God's creation to a human act, so it is taken out of context. This text is not a sufficient basis to argue for the right of creation. Macolm, (1982), 779, cited in Simmons, (1998), 997-999. I add that Tully does not even rely on the *Second Treatise* for this argument.
[866] Simmons, (1992), 256-259.
[867] Waldron, (1988), 199-200.
[868] Tully, (1980), 120. See also Simmons, (1992), 259.
[869] Tully, (1980), 120.
[870] Waldron, (1988), 198-199.
[871] Waldron, (1988), 198-201.

in the original grant that Locke uses as a basis for his property doctrine.[872] As seen below, only God is referenced in connection with the verb "create"; human authority uses the verb "make," which is similar to "modelling" or "shaping." The Genesis clearly demonstrates that only God creates, makes, forms, and shapes in comparison to humans who can shape and ameliorate already existing materials created by God: "And God *created* man in His own image, in the image of God created He him; male and female created He them" (Genesis, *Book of Creation,* ch 1, Sec. 27, emphasis added).[873] Creating from none only relates to God. The second story of creation detailed within ch 2 of the *Book of Creation* uses the Hebrew verb with the specific literal interpretation of "formation": "Then the LORD God *formed* man of the dust of the ground, and breathed *into his nostrils the breath of life;* and man *became a living soul."* (emphasis added).[874] Here, formation is the chosen verb that implies the shaping of an already existing material or the shaping of a material already created by God. This is further observed within the Genesis, *Book of Creation,* ch 2, Sec. 8: "And the LORD God planted a garden eastward, in Eden; and there He put the man whom He had *formed.*"[875]

Another biblical source confirming all the vocabulary given to God's role is the *Book of Isaiah*: "Every one that is called by My name, and whom I have *created* for My glory, I have *formed* him, yea, I have *made* him."[876]

In comparison, when speaking of the purpose of men a specific vocabulary is used: men are only given the right to "*subdue*"[877] God's creation. Locke himself interprets the word "subdue" as "ameliorate for the benefit of life." "God and his *Reason* commanded him [man] to ***subdue*** *the Earth, i.e.* ***improve it for the benefit of Life***, and therein *lay out something upon it that was his own, his labour*" (Locke II, 32, emphasis added).

The word used in Genesis for "subdue"[878] has a similar meaning—"*to dress it* and *to keep it*"[879] (emphasis added). This confirms Locke's interpretation of the word "subdue" as

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[872] See Locke's use of Genesis on p. 146.

[873] Genesis, *Bk. of creation*, Ch. 1. Sec. 27:

כז וַיִּבְרָא אֱלֹהִים אֶת-הָאָדָם בְּצַלְמוֹ, בְּצֶלֶם אֱלֹהִים בָּרָא אֹתוֹ: זָכָר וּנְקֵבָה, בָּרָא אֹתָם.

27 And God created man in His own image, in the image of God created He him; male and female created He them

See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[874] Genesis, *Bk. of creation*, Ch. 2. Sec. 7:

ז וַיִּיצֶר יְהוָה אֱלֹהִים אֶת-הָאָדָם, עָפָר מִן-הָאֲדָמָה, וַיִּפַּח בְּאַפָּיו, נִשְׁמַת חַיִּים; וַיְהִי הָאָדָם, לְנֶפֶשׁ חַיָּה.

7 Then the LORD God *formed man* of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul.

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[875] Genesis, *Bk. of creation*, Ch. 2. Sec. 8:

ח וַיִּטַּע יְהוָה אֱלֹהִים, גַּן-בְּעֵדֶן--מִקֶּדֶם; וַיָּשֶׂם שָׁם, אֶת-הָאָדָם אֲשֶׁר יָצָר.

8 And the LORD God planted a garden eastward, in Eden; and there He put the man whom He had *formed*

Emphasis added . See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography

[876] *Book of Isaiah,* Ch. 43. Sec. 7, emphasis added:

ז כֹּל הַנִּקְרָא בִשְׁמִי, וְלִכְבוֹדִי בְּרָאתִיו, יְצַרְתִּיו, אַף-עָשִׂיתִיו.

7 Every one that is called by My name, and whom I have *created* for My glory, I have *formed* him, yea, I have *made* him.

Emphasis added . See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[877] Genesis, *Bk. of creation*, Ch. 1, Sec. 28. To avoid repetition, see in Hebrew p. 252.

[878] Ibid.

[879] Genesis, *Bk. of creation*, Ch. 2. Sec. 15:

ameliorating for the benefit of life. Men thus can dress and keep and ameliorate the existing creation but not create new things.

The specific choice of verbs such as "form," "make," and "create" demonstrate that God not only created but also formed and made man; God is the only one who can do all these acts. Thus, even in the original grant, which Locke relied on, there is a difference between God as the only one who can "create" from nothing and man who dresses, keeps, and ameliorates God's creation. The Genesis thus supports my argument that it is not for men to create from nothing but to ameliorate using labour for the benefit of life.

Simmons (1992) discusses Mary Shelley's tale of Victor Frankenstein, who tried to create using science a God-like life form with disastrous results because man is too limited to create: "Frightful would be the effect of any human endeavor to mock the stupendous mechanism of the Creator of the world."[880]

Waldron (1988) further adds that Tully's creation rights give man an absolute property right in the physical environment, just as God has absolute rights in his creation.[881] I further add that absolute rights do not align with Locke's natural law limitations.[882] I thus join Waldron (1988) against Tully in saying that Tully's conclusion is "far too strong" because creation rights are absolute and unlimited. Locke sought to show that property rights are limited.[883] Even Sreenivasan (1995), a Tully follower, mentions that only "creating" gives absolute property rights because only God "creates." "Making" only generates weaker rights in property that are not absolute in nature.[884]

Colman (1983) tries to corroborate Tully's central placement of creation rights on the basis of human creation of thought.[885] But Simmons (2008) answers that humans might create their thoughts but not the persons or the consciousness that constitute it. Humans are not created by humans.[886] I further add that even though all thoughts are created in the mind, some are a mixture of images received and past experiences.

Sreenivasan argues that when Locke talks of owning acorns or apples (or water or animals taken at hunt), "he has simply made a mistake about 'relatively unimportant cases of property' (p. 87). I think this is an odd reading of Locke since as Simmons replies, those "unimportant cases" constitute, of course, the majority of Locke's examples of property in the state of nature."[887] It is indeed a fact that those examples of appropriation are Locke's primary example of property rights. The appropriation by occupation or first seizure is supported by recognized natural law ideas in Roman law and Grotius.[888]

Simmons also explains that Locke's labour theory goes along with those specific examples

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טו וַיִּקַּח יְהוָה אֱלֹהִים, אֶת-הָאָדָם; וַיַּנִּחֵהוּ בְּגַן-עֵדֶן, לְעָבְדָהּ וּלְשָׁמְרָהּ.

15 "And the LORD God took the man, and put him into the garden of Eden to ***dress it and to keep it***." (emphasis added).

Emphasis added . See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography. It is recognized that the second story of creation detailed in Ch. 2 is where God's intentions for mankind are revealed.

[880] Simmons, (1992), 257, citing Mary Shelley, (1981), *Frankenstein*, Bantam, New York, xxv.

[881] Waldron, (1988), 198-201.

[882] See p. 210.

[883] Waldron, (1988), 198-199.

[884] Sreenivasan, (1995), 38-84.

[885] Colman, (1983), 189.

[886] Simmons, (1998), 997-999.

[887] Simmons, (1998), 997-999.

[888] Ibid. See p. 153.

and best support his arguments "while the best that Sreenivasan can say (without any further argument) for his secular reconstruction of the maker's right argument is that it 'retains a certain plausibility' (p. 125)." Sreenivasan's best argument still contradicts Locke's words regarding absolute rights in what we make.[889] Simmons thus objects to "the analogy that allegedly supports rights for human 'makers' as insufficient."[890] He concludes that "[i]n short, Sreenivasan uncovers virtually *no convincing evidence* that Locke's texts do therefore warrant his reading (p. 81)."[891] Further, creation rights might be interpreted as giving parents rights in their children as they "made" them. But Locke notes that "fatherhood is such an one as utterly exclude all pretence of title in earthy parents; for he is King because he is indeed maker of us all, which no parents can pretend to be of their children" (Locke I, 54). Waldron (1988) objects to Tully as he uses a principally parenthetical defence that Locke himself does not support.[892] Simmons (1992) adds that if adding value through labour creates a right of making, this might be interpreted too broadly so that even parents could claim a right in their children as their makers.[893] Here, I defend Tully (1995) because he himself mentions that Locke specifically rejects this inference of parents' rights.[894]

A few years after his *Discourse*, Tully (1995) changes several of his interpretations of Locke, but he continues to defend his interpretation of centrality of creation rights.[895] Tully insists on defending his "workmanship model" in saying that it provides "the foundation to an 'exclusive property rights' given in society."[896] He emphasizes that it is advantageous in that it remains close to the ethical language of labour and its value of improvement that Locke emphasises in his property theory.[897] He also notes that God made us, but we make our own actions (labour) and as such, we are actually both our own and God's property at the same time with no inconsistency.[898]

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[889] Simmons, (1998) thinks that Sreenivasan's, (1995) support for Tully's arguments finds "very weak" textual evidence from Locke's writings. When Sreenivasan cites Locke as saying that we own our actions, it is not appropriate because this same essay only speaks on the conditions under which such can be considered an action. Sreenivasan mainly relies on two sentences from Locke's essay on morality in which Locke implies that "making" is what creates property for humans. "*Sreenivasan neglects to tell us, however, that Locke there immediately proceeds to defend a compact theory of property ("Men therefore must either enjoy all things in common or by compact determine their rights"), which is not only inconsistent with Second Treatise doctrine, but renders utterly implausible Sreenivasan's contention that the cited passage is intended to support a maker's right account.*" (Simmons, (1998), 998-999). Sreenivasan however attempts to provide textual evidence from the *Treatises* in support of his maker's reading. Simmons finds that both are from the *First Treatise*. Sreenivasan uses sections 30 and 40 to demonstrate dominium rights as identifying man as "makers" like God (p. 65, 75). Simmons notes, "*What Locke actually says in those passages, however, is only that our similarity to God consists in man's being 'an intellectual creature.' ...[T]he claim in no way implies the maker's right doctrine; for it is equally consistent with Locke's simply intending to say that right holders (or moral agents generally) must be rational, since being under the 'law of reason' requires that the law have been given to us through our reason*" (Simmons, (1998), 998-999).

[890] Simmons, (1998), 998.

[891] Emphasis added. Simmons, (1998), 997-999. Simmons notes, "So in my view the 'traditional' reading of this part of Locke's theory is not only plainly asserted in Locke's texts (where Sreenivasan's, (1995) version is plainly not), but properly construed it is relatively persuasive and gives Locke's arguments a force for contemporary philosophers that Sreenivasan's maker's right argument lacks. This gives us two important reasons to prefer it" (Simmons, (1998), 998-999).

[892] Waldron, (1988), 179, 199. See also Waldron, (1984), 100-101.

[893] Simmons, (1992), 256-259.

[894] Tully, (1995), 117, citing Locke I, 51-55. See also Sreenivasan, (1995), 65-71.

[895] Tully, (1995), 117.

[896] Tully, (1980), 104-124 and Tully, (1995), 115.

[897] Tully, (1995), 117.

[898] Tully, (1980), 105, 108-109.

Waldron (1988) answers that

> "any imputation of inconsistency in this context would be mistaken. First, we should note that *Locke draws a clear distinction between the property rights that men have vis-à-vis one another and the property they have in relation to God* (I.39 line 54-60)…Secondly, and more importantly, *Locke does not say or require in his theory of appropriation that we should have property rights in our bodies. The term he uses is 'person; 'every man has a Property in his own Person.* This no Body has any right to but himself'." (Locke II, 27)[899]

Waldron holds that Locke makes a clear distinction between property rights of man and God. He claims that Locke deliberately refers to ownership of person instead of body.[900] Tully (1995) further rejects Simmons's assertions about a theological basis for a maker's rights. For Tully, this workmanship right "is independent" of God's existence. [901] I reply that Simmons never rejected the right of creation as a whole but only the central placement that Tully gives it. It minimises the importance of Locke's labour argument. Simmons uses the right of creation as a further possible independent ground for rights in property, which is consistent with his thesis on Locke's pluralism of arguments.[902]

To Simmons, Locke uses the right of creation as an additional basis for his theory of property. In a way, it is an additional solid ground for creating property rights. Simmons insists that it is this detachability of argumentation that guarantees its relevance in contemporary philosophy. He claimed that for Locke, the right in property derives from the need for self-preservation, God's intentions that we labour for the amelioration of creation, the labour theory, and the right of creation.[903]

I agree with Simmons's conclusion that the main purpose of the right of creation is to explain why we are to obey God. To Simmons, the right of creation answers how we are to understand that each has a property right "in his own person" (Locke, II 27), including labour, while remaining God's property (Locke II, 6).[904] Simmons asks where God gains the authority to command as a creator. He replies that only God "really" creates while we "merely modify existing things."[905]

3.6.3.1.1 Conclusions

I cannot agree with Simmons on the right of creation as a separate basis of property rights. The right of creation is not based on any clear text of Locke. Claiming Locke intended to confer absolute property rights opposes my central thesis—Locke's insistence on natural law limits. The differences between "create" and "make" under the original grant make it impossible that Locke conferred the same property rights as those held by God over His creation for man only shapes and ameliorates existing materials for the benefit of life.

My interpretation of Locke justifies and confirms that the labour theory is Locke's central contribution and the very basis of property rights. This goes against Tully and Sreenivasan,

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[899] Emphasis added. Waldron, (1988), 168-180.
[900] See p. 127.
[901] Tully, (1995), 115.
[902] See p. 9; p. 142.
[903] Ibid.
[904] Simmons, (1992), 256-259.
[905] Simmons, (1992), 257.

who make creation rights Locke's primary argument. The rights of creation mainly explain why this right can only exist in God as the sole authority who has created that which man ameliorates. As such, any other "maker's right" is inferior.[906] The creation right simply explains man's position as God's property (Locke II, 6) and as owners of our own persons (Locke II, 27). Tully's right of creation cannot be central to Locke's theory. Most interpreters of Locke give that place to his labour theory.

[906] Simmons, (1992), 256-259.

4 Natural Law and Reason

4.1 In general

As seen above, natural law does not define clearly just or unjust principles.[907] Instead, it instructs the practice of reason, which all humans are capable of, for the analysis and deduction of judgments, relative to each individual and his surrounding circumstances. Natural law is understood via the individual use and guidance of reason, the existence of which directs each human to use and follow it so as to express human higher nature and dignity.[908] Locke describes the law of nature as a set of moral guidelines to be found within human nature.[909] Locke refers to reason as representing natural law: "a law of nature to govern it, which obliges every one: and reason, which is that law…" (Locke, II, 6). Reason thus represents the law of nature with its natural law limits.

Reason is given to mankind in common as a measurement for their own mutual protection and for their peaceful and safe preservation: Locke says that *"the law of nature*, …(is the rule) *of reason and common equity*, which is that *measure God has set to the actions of men*, for their *mutual security*" (Locke II, 8, emphasis added). To Locke, the use of reason provides safety and peace to mankind: "*the peace and safety of it, provided for by the law of nature*" (Locke II, 8, emphasis added). Following reason is in accordance with common equity, or the common good. Further, Locke states that reason teaches the way of peace: "*reason*, which God hath given to be the rule between man and man, and the common bond whereby human kind is united into one fellowship and society; …*the way of peace which that teaches"* (Locke II, 172, emphasis added). Reason thus represents the moral guidelines that were given to humanity for mutual security.

Natural law is called "natural" because it is acquired by natural faculties such as the senses, perception, and reason. Locke says that the use of reason and morality is "demonstrative" in nature and can be found through the mental effort of discovery and experience, or as Locke elsewhere says, by "empirical reasoning" or the "rational deduction from concepts rooted in sense perception."[910] To Locke, "reason ... is to be got *and improved by custom, made easy and familiar by an early practice.*"[911] He further advises to be "brought to learn the art of stifling their desires, as soon as they rise up in them, when they are easiest to be subdued… be accustomed betimes to consult, and make use of their reason, before they give allowance to their inclinations."[912] Locke thus says that we are to educate ourselves that as soon as a desire of passions arises, we are to consult our reason so as to see if this desire is contrary to reason. The timing should be immediate; afterwards may be too late. To Locke, the use of reason should be practiced in children:

> "If therefore I might be heard, I would advise, that, *contrary to the ordinary way, children should be used to submit their desires, and go without their longings, even from their very cradles. The first thing they should learn to know, should be, that they*

[907] See p. 55.
[908] See p. 168.
[909] See Locke, (1689), *Human Understanding*, Bk. IV, Ch. 20, Para. 6; Bk. I, Ch. 3, Para. 1-4.
[910] This is confirmed in Forde, (2006), 243, citing Locke, (1663), *Questions Concerning The Law of Nature*; Bk. IV, Ch. 16, Para. 4, Questions; 133.
[911] Locke, (1693), *Education*, Para. 38, emphasis added. See undeniable references in Locke starting on p. 191.
[912] Ibid., Para 107. See additional Ref. p. 191-193,195.

> *were not to have anything because it pleased them, but because it was thought fit for them.*" (emphasis added)[913]

For Locke, the sooner the children learn not to submit to their own pleasures, the better it is for it will be easier for them to obey reason in spite of the inconveniences to the self: "But yet I doubt not, but when it is considered, there will be others of opinion with me, that *the sooner this way is begun with children, the easier it will be for them*" (emphasis added).[914] According to Locke, education of manners and abilities is the most efficient way to change the government of passions to that of reason: "If what I have said in the beginning of this discourse be true, as I do not doubt but it is, viz. That the difference to be found in the *manners and abilities of men is owing more to their education than to any thing else"* (emphasis added).[915]

Pufendorf has the same understanding of the exercise of reason: it represents the "permanent attributes of human 'nature', knowable from both the *observation of the human experience and the dictates of moral reason*, and interacting in proportions that varied with time, place, and circumstance."[916] To Pufendorf, natural law is the dictate of the rational and sociable nature of man, given to man by God, without which no peaceful fellowship could ever exist.[917]

Even Aristotle (350 B.C.E.) notes that the capacity of reason is to be exercised by habit:

> "[W]hile *moral virtue comes about as a result of habit*, whence also its name (ethike) is one that is formed by a slight variation from the word ethos (habit). From this it is also plain that none of the moral virtues arises in us by nature; for nothing that exists by nature can form a habit contrary to its nature. … rather we are adapted by nature to receive them, and are made perfect by habit."[918]

Von Leyden (1956) confirms that "in Locke's view it is reason in co-operation with *sense-experience which reveals the existence of a natural law* and also the dictates of this law" (emphasis added).[919] To Locke, using reason requires the re-education of the personal experience of the senses as soon as a selfish desire arises. One must judge, based on the surrounding circumstances, whether this desire is in accordance with the limits of reason. This must be exercised from the youngest age possible.

Below, I argue that for Locke, reason represents more than the usual definition referring to a mere intellectual capacity of observation and judgment of surrounding circumstances. I find references that imply the ability to go above or even deny certain self-appetites to follow a choice of action that avoids, as much as possible, harming anyone else.[920] In other words, it is

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[913] Ibid., Para 38.
[914] Ibid., Para 39.
[915] Ibid., Para 32.
[916] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 13, emphasis added. Straumann, (2006) confirms that from the few methodological remarks in chapter one (of *De iure praedae*), "it becomes clear that the basic iuris quaestio is to be decided in a rhetorical fashion, by means of *deduction from a priori reasoning* that is put to the *test by the approval* (IPC 1, fol. 5)" Straumann, (2006), 335, emphasis added.
[917] Pufendorf, (1672), *De iure Naturae*, Vol. I, Lib. 6, Cap. 18: "*Quae cum rationali et sociali natura hominis ita congruit, ut humano generi honesta et pacifica societas citra eandem constare nequeat*".
[918] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. II, Ch. 1, emphasis added. See full analysis on p. 205 of this thesis.
[919] See Von Leyden , (1956), 27, 30.
[920] See analysis on p. 183 & 189.

a decision that represents the natural law, demonstrated by its moral limitations for the good of the whole: "[G]reat principle and *foundation of all virtue* and worth is placed in this: that a *man is able to deny himself his own desires, cross his own inclinations, and purely follow what reason* directs as best, *tho' the appetite lean the other way*" (emphasis added).[921] According to Locke, the most fundamental virtue is the "*power of denying ourselves the satisfaction of our own desires, where reason does not authorize them*."[922]

Locke's *Second Treatise* (II, 12)[923] notes that the law of nature is plainer than positive law, as much as reason can be understood behind the "intricate contrivances" and "fancies" of men. In other words, those who can go above their appetites and conveniences and obey the limitations of reason for the good of the whole will find the law of nature simpler than positive law. To know reason, one has to go above the fancies of appetites. According to Locke (II, 124),[924] the law of nature is to be found within each individual and it is plain to all "rational creatures." It is the lack of study of reason while giving first priority to baser passions that makes men fail to follow and understand the binding force of the law of nature. Selfish interests hide the role of reason and its responsibility for the whole. Locke notes that some men might very well observe the wrongs of the law of nature in others. Still, it is difficult for them to see the breaches of the law of nature when it concerns their own cases. Their automatic tendency towards self-preservation and convenience often hides their global view of the whole. Locke further explains the same under II, 136,[925] which also demonstrates why it is not easy to convince those who do not use reason. They are blinded by their own interests and passions.

Making a decision for the common good is not necessarily a calculation of how many would be benefitted by the decision, which can be difficult to calculate. Locke intends a calculation of how many could be harmed. The purpose of natural law is to avoid harm to others. If there is a potential for harm, we are to make a different decision in spite of the inconveniences to the self.[926]

Grotius (1625) supports this notion of a "man, who, possessing the knowledge of good and evil, *refrains, even with inconvenience to himself, from doing hurt*" (emphasis added).[927] My argument on Locke's moral use of reason is supported by his *Second Treatise* as well as other natural law authors (Locke's predecessors). But the clearest references are reflected in Locke's text on education and his essay on human understanding.[928] Other natural law authors support the same use of reason, confirming my interpretation of Locke's use of reason as not new but an established natural law idea. I finally support my interpretation based on a contrary philosophy that denies natural law: utilitarianism. I show that even this philosophical idea supports a use of reason similar to that which Locke uses.

Locke's moral use of reason is supported in the chapter above, which demonstrates that Locke gives an important place in his *Second Treatise* to the concern for the preservation of others, above the preservation of the self.[929] All men have the same basic rights of preservation

[921] Locke, (1693), *Education*, Para. 33, emphasis added. See p. 191.
[922] Ibid., Para 38; see p. 191.
[923] See p. 29, p. 177, and p. 178.
[924] See p. 32, p. 177, and p. 178.
[925] Full citation on p. 32, p. 55 and p. 178.
[926] See analysis of no harm to others on p. 123 and the precepts of natural law on p. 55.
[927] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11. See p. 174.
[928] See a separate analysis of Locke's text on education and human understanding on p. 191.
[929] See p. 100.

because all are obligated to respect the rights of others as they hope their own are respected (Locke II, 5).[930] Further support stems from the fact that the purpose of Locke's moral limitations is that no one is harmed by the appropriation.[931]

4.1.1 Reason as an independent basis of natural law

Reason is the very basis of the discovery of natural law and as such is recognized as the basis of natural law.[932] Grotius (1625) demonstrates that natural law is based on human reason regardless of a connection to the existence of God because reason is common to all humans.

> "Now the *Law of Nature is so unalterable, that it cannot be changed even by God himself.* For although the power of God is infinite, yet there are some things, to which it does not extend. *Because the things so expressed would have no true meaning, but imply a contradiction. Thus two and two must make four, nor is it possible to be otherwise;* nor, again, can what is really evil not be evil. …For as the substance of things in their nature and existence depends upon nothing but themselves; … *Whereas in reality there is no change in the unalterable law of nature.* "[933]

Grotius states thus that no one can change the law of nature. Being based on reason, it is independent of God. It is unchangeable and "*unalterable.*" Facts change, but not natural law.

Since the time of Grotius, natural law has been entirely based on reason and human nature. As explained in the introduction on natural law, there are different schools of thought on natural law. But the use of reason as the basis of natural law is observed in them all.[934] I do not intend to develop this point here as it has been done in detail many times in the past. Daston and Stolleis (2008) provide an historical review of the early modern jurisprudence of natural law and discuss many modern natural law authors who remove God from their definition of natural law.[935] Below are a few examples of natural law authors who claim natural law no longer includes God and is independently based on the reason that can be found within each individual and all humanity in common.[936]

Vattel (1747) opposes God as a basis for natural law because it is impossible to presume God's desire, which can only be observed via human nature. As such, natural law is only derived from human nature and not from God because it is the only way to judge things on our own:

> "How do these authors (i.e. those who attribute the laws of nature to God's will) know that God and no other has imposed a particular law on men? They presuppose that God can give men only the most appropriate laws. But how do they discern the most appropriate laws? *They observe the nature of man and of things*." (emphasis added)[937]

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[930] See p. 79.
[931] See p. 210.
[932] See explanation of the importance of reason in natural law on p. 18.
[933] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10-12, emphasis added.
[934] See p. 18.
[935] Daston, Stolleis, (2008), 60-70.
[936] Taken from Daston, Stolleis, (2008), 60-70 (including references on the independent use of reason).
[937] Vattel, (1747), Part 1, Ch. 4, Sec. 9, emphasis added. Darjes, (1762) later supports Vattel and says that we cannot suppose God's wish: "[H]ow should I know what God so wishes?" Darjes, (1762), 42, cited in Vattel, (1747), Part 1, Ch. 4, Sec. 9.

For Vattel, "the natural laws are, in particular, those which *oblige us by nature* or whose basis is to be found in the *essence and nature of man*"[938] (emphasis added).

Montesquieu (1748) writes that the laws of nature "are so called because they *spring solely and entirely from our character*"[939](emphasis added). [940] To Claproth (1749), "When one perceives them (i.e. laws) *from the nature of man* and of the other things by which we are surrounded, one refers to them as natural laws" (emphasis added).[941] According to Nettelbladt (1785), "A law is a rule" and "if one accepts that this rule is *laid down by nature,* the law is referred to as natural law" (emphasis added).[942] Heydenreich (1794) argues that natural law is the "legislation of reason."[943] Kant (1798) claims that the natural law is "a system stemming from *reason*" (emphasis added).[944] Jakob (1802) agrees that natural law is "provided *through the concept of human nature*" (emphasis added).[945][946] According to Hoffbauer (1804), "the *reason for the validity of laws* of law *can lie only in reason*" (emphasis added).[947] Bauer (1808) notes that "the *sole source of the law of nature* lies in *practical reason*" (emphasis added).[948][949] According to Gros (1815), "the law of nature can also be referred to as the law of reason because law is *based on the rational nature of man*" (emphasis added).[950] Brunner (1945) claims that all natural law is based on what he calls "justice," which is innate in all men.[951] It is thus well established that natural law does not depend on the existence of God. It depends on reason, the natural capacity found in all humans (assuming there is no defect).

Locke also follows this tendency to make reason independently important as the common natural faculty of men and the basis of the discovery of natural law. Locke's *Essays on the Laws of Nature* are dedicated to the argument that natural law can be known by reason via the experience of the senses.[952] In the *Second Treatise,* reason grants freedom of choice over the government of passions.

4.1.2 Reason as a freedom of choice over the government of passions

In the *Second Treatise*, reason represents freedom of choice:

> "[B]ut *freedom is not, as we are told, a liberty for every man to do what he lists*: (for who could be free, when every other man's humor might domineer over him?) but a

[938] Vattel, (1747), Part 1, Ch. 4, Sec. 31.
[939] Montesquieu, (1758), Bk. 1, Ch. 2, 12. See also; Bk. 1, Ch. 1, 10.
[940] See also Wolff, (1738)*:* "[N]atural law is one which has [a] *sufficient basis in the essence and nature of man*." Wolff, (1738), *Phlosophia practica universalis, pars prior*, 117, 135 (emphasis added), cited in Pound, (1914), 623.
[941] Claproth, (1749), 31, 33, 43, 46. Cited in Daston, Stolleis, (2008), 60-70.
[942] Nettelbladt, (1785), *Systema elementare universae jurisprudentiae naturalis*, Halle. 111, 58. Cited in Daston, Stolleis, (2008), 60-70.
[943] Heydenreich, (1794), 33.
[944] Kant, (1798), Preface, 3.
[945] Heinrich, (1802), Ch. 9, 5.
[946] Thomas, (1803) joins and says natural law is "founded…directly in reason." Cited in Anton, (1803), Ch., 9, 4.
[947] Hoffbauer, (1804), *Naturrecht, aus dem begriffe des rechts entwickelt*, Halle. 66, Note. 1, 50, Cited in Daston, Stolleis, (2008), 60-70.
[948] Bauer, (1808), Ch. 20, 19.
[949] On practical reason, see Aristotle, (350 BC), *Nicommachean Ethics*, Bk. VI, Ch. 12.
[950] Gros, (1815), Ch. 42, 26.
[951] Brunner, (Hottinger transl. 1945), *Justice and the social order*, 18-19, 50.85-86, (Chancellor of the University of Zurich), cited in S.L.R, (1957), 467.
[952] Locke, (1689), *E.L.N.*, Essay 4, Para. 117, 153,157, cited in Simmons, (1992), 21-22. See also Yolton, (1985), 48.

> *liberty to dispose, and order* as he lists, *his person, actions, possessions, and his whole property, within the allowance of those laws under which he is*, and therein not to be subject to the arbitrary will of another, but freely follow his own." (Locke II, 57, emphasis added)[953]

Freedom is not the liberty to do as one pleases, for what kind of freedom is it to desire the domination of another with an equal right of preservation? True liberty is to do as one pleases within the limitations of the law of nature so that no others are harmed. Being free is to be able to have free choices above the government of passions. We are all to be governed by the law of our nature and its limitations for the preservation of our kind as a whole.

According to Locke, the use of reason grants freedom of choice above the government of instinct and self-passions shared with the animal kingdom.

> "The freedom then of man, and liberty of acting according to his own will, *is grounded on his having reason, which is able to instruct him in that law he is to govern himself* by, and make him know how far he is left to the freedom of his own will. To turn him *loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free; but to thrust him out amongst brutes, and abandon him to a state as wretched*, and as much beneath that of a man, as theirs." (Locke II, 63, emphasis added)[954]

Not being ruled by reason does not liberate us but reduces us to the level of beasts, which cannot choose for themselves but follow baser instincts.

Grotius's understanding of the differences between animals and men is similar.

> "*Lactantius* may be cited, who, in his fifth book, says that *in all animals devoid of reason we see a natural bias of self-love. For they hurt others to benefit themselves; because they do not know the evil of doing willful hurt.* But it is *not so with man, who, possessing the knowledge of good and evil, refrains, even with inconvenience to himself, from doing hurt.*"[955]

The conclusion thus is that using and putting in practice reason represents freedom of choice. Without the use of reason, we are not acting by free choice but are slaves to our own passions. The knowledge of reason obliges us to follow it and avoid acts that might harm others, even when it creates inconveniences to the self.

Ashcraft (1986) can be used as support. Ashcraft says that for Locke, the ability to govern the passions with the help of reason is that which determines if the person is free and independent; "When Locke raises the issue of what determines whether an individual is a 'free,' 'equal', 'independent' person under the law, natural or civil, he gives the same reply. It is his *reason and the ability to govern himself.*"[956] For Ashcraft, reason is the ability to govern base passions and become free via this choice of action.

Tully (1980) confirms, "Once the *state of freedom is attained, a man is capable of becoming a free agent by using his reason to discover natural law* and to direct his will in acting" (Locke II, 57). "*A free man is in the state of freedom in virtue of his ability to use reason . . . .*A free

[953] See p. 64.
[954] See p. 60. See also Locke II, 172 and p. 61. See further p.194-195.
[955] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11, emphasis added. See p. 174.
[956] Ashcraft, (1986), 581, emphasis added.

agent must have the power to do or forebear any particular action and must make the choice. Thus, a free action, in addition to being voluntary, must follow from a choice" (Locke II, 21.8).[957] Tully thus says a free man is one using and following reason while making a deliberate choice of action. A free man employs reason and choice.

Locke notes that those with a defect of reason are incapable of being free:

> "But if, through defects that may happen out of the ordinary course of nature, any one comes *not to such a degree of reason, wherein he might be supposed capable of knowing the law, and so living within the rules of it*, he is *never capable of being a free man*, he is never let loose to the disposure of his own will (because he knows *no bounds to it, has not understanding, its proper guide*) but is continued under the tuition and government of others, all the time his own understanding is incapable of that charge." (Locke II, 60, emphasis added)

Here, Locke writes that those who have a defect or lack of capacity to reason must be guided because they themselves could never be free without knowing the bounds of reason. Without the capacity to reason they cannot know the moral bounds of right and wrong and as such must be guided by someone who does.

4.1.3 Tully's 'person' in the same use of Locke's reason:

Tully explains that "Since the term 'person' is predicted only of free agents, *a person* is an agent who performs *intentional, deliberate action.*"[958] The difference between a person and a man is "self-consciousness" (Locke II, 27.9). This consciousness always comes along with thought: "self- consciousness is also consciousness of action."[959] He explains thus that for Locke, a person, as opposed to a man, is one in control of his reason with awareness and who reflects on the situation. A person is a thinking being whose intelligence accompanies awareness or reason and who judges the consequences of his/her acts to be morally good or bad. To Tully, "The guide which the free agent consults in deliberation permits the agent to *judge if the proposed action conduces to a moral or evil* end (Locke II, 28.8)."[960] It is this deliberate observation from outside that judges right from wrong. Locke uses reason (rationality) in this manner. For Locke, it is reason which makes a difference between the animals governed by own instincts and a person who is self-conscious and rational and who observes the situation from the outside and judges how best to be act to avoid harm to anyone.[961] This interpretation of Locke's use of reason is supported by all of Locke's references in this chapter on reason. Darwall (2006), an interpreter of Grotius, notes that the laws of nature are "only in view of some rational creature; for *law is imposed only* upon a *nature that is free.*"[962] This means that Grotius assumed the natural law applies only to a man who uses reason and becomes free to make choices and act. For Locke, the use of reason represents the freedom to choose that which avoids harm to others instead of relying on baser instincts like animals, which have no other choice.

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[957] Tully, (1980), 106-107, emphasis added.
[958] Tully, (1980), 106-107, emphasis added.
[959] Tully, (1980), 106-107.
[960] Tully, (1980), 106-107, emphasis added. See more on p. 127-128. However, I object Tully's specific use of 'person' as a man following reason. Locke's choice of the term 'person' is merely to show that a man cannot own his own body so that he is not free to harm himself because body must be preserved (see p. 128-129). Thus, I argue it is not the term 'person' that makes a difference but the use of reason.
[961] For confirmation, see p. 179, p. 181, and p. 183.
[962] Darwall, (2006), 7, emphasis added.

4.1.4 A rational creature to be governed by the law of reason

Locke thought that a creator who represents goodness, justice, and reason could not have created man with the capacity to reason if they were not to use that reason:

> "*[R]eason*, as well as revelation, *must acknowledge to be in him*; unless we will confound good and evil, God and Satan… It was such a law as the *purity of God's nature required, and must be the law of such a creature as man; unless God would have made him a rational creature, and not required him to have lived by the law of reason*; but would have countenanced in him *irregularity and disobedience* to that light which he had, and that rule which was *suitable to his nature*; which would have been to have authorized *disorder, confusion, and wickedness* in his creatures: *for that this law was the law of reason, or as it is called, of nature*; we shall see by and by: and if rational creatures will not live up to the rule of their reason, who shall excuse them?" (emphasis added)[963]

To distinguish man from the animals, the creator gave in common to all men the capacity to follow reason and be guided by the law of reason, which suits their higher moral nature. Otherwise, God would have condemned man to irregularity, disorder, and confusion.

Simmons (1992) cites *Locke's Essays on the Laws of Nature* (1954), in which Locke argues that the law of nature is known by reason through experience and the senses. The creator, being wise, "has *not created this world for nothing and without purpose*."[964] For Locke, "it does not . . . fit in with the wisdom of the *Creator to form an animal that is most perfect and ever active*, and to *endow it* abundantly above all others *with mind, intellect, reason*, and all the requisites for working, and *yet not to assign to it any work*."[965] So all men have within their nature reason that should be put to work and used. Even if the choice to follow it is a moral one given to all, they are bound to follow reason. Reason has an explanation. It must be used and followed if we are to reflect our true nature.

Tully (1980) noted that humans use their reason "*to discover natural law* and chooses to act in accordance with it, thus participating in the divine order in the way appropriate to a rational creature"…."Since *God constructs man with reason, His right correlates with man's duty to act in accordance with the purposes for which he is made*."[966] To Tully, man is given reason to use it to discover the natural law and then follow it.

4.1.5 Reason distinguishes man from beast

Locke claims that it is reason that distinguishes man from beast. He notes that the use of reason is so attached to human nature that no one can renounce it without sinking to the level of the beasts.[967] To Locke, not following reason makes one "dangerous to mankind" (Locke II, 8) as a whole. To violate the law of nature is to "quit the principles of human nature" and to become a dangerous or "noxious creature" (Locke II, 10). To go against reason is to declare a "war against all mankind" (Locke II, 11). Reason is the "common rule and measure" given to all mankind for their own security (Locke II, 8). Reason is given to humans to be used and

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[963] Locke, (1695), *Reasonableness of Christianity*, Vol. 6, 'The Reasonabless of Christianity, as delivered in the Scriptures', Para. 14
[964] Simmons, (1992), 21-22, citing Locke, (1689), *E.L.N.*, Essay 4, Para. 157 (emphasis added).
[965] Simmons, (1992), 21-22 citing Locke, (1689), *E.L.N.*, Essay 4, Para. 117, (emphasis added).
[966] Tully, (1980), 41 (emphasis added). See further Ref. footnote No. 1054.
[967] See p. 59.

followed for mutual protection. For Locke, in the long run, without the law of reason, there can be only war and violence: When "not under the ties of the common law of reason, [men] have *no other rule, but that of force and violence,* and so may be treated as beasts of prey, those dangerous and noxious creatures" (Locke II, 16, emphasis added).

According to Locke, the use of reason guarantees the freedom of choice: "The *freedom* then of *man*, and *liberty of acting according to his own will, is grounded on his having reason*, which is able to instruct him in that law he is to govern himself by" (Locke II, 63, emphasis added). Without reason, we are guided only by passions and self-interests. Locke insists it is not liberating to eschew reason. The "unrestrained liberty" of the senses without the guidance of reason can only put men on the same level as "brutes" or into "a state as wretched" and "much beneath that of a man," with no higher moral guidance. Locke is aware that it might be more liberating without reason and the obligation to follow it, but this would not be true liberty—it would make man a slave to his passions. The difference between a man and a brute is in using reason to avoid harm to others. This is the only way to make man free.

Locke further notes that by renouncing reason—given to humanity—one declares himself to be in a state of war against humanity. He is "revolting" against his "own kind" and as such, he descends to the level of beasts that devour each other for profit. The injured person and the rest of humanity who seek justice have the right to destroy him like the dangerous wild beast he has become (on the meaning of 'destroy' see p. 61). Reason is there for humanity's protection, as the "common bond" to rule among men. To renounce it is to renounce the "way of peace that it teaches" and become exposed to the rule of violence and force. Reason teaches peace for the good of the whole. Renouncing it is to become a brute (Locke II, 172).[968]

Sidgwick (1946) notes,

> "God having given man above other creatures of this habitable part of the universe *a knowledge of himself* which the *beasts have not*, he is thereby *under obligations*, which the beasts are not, for knowing God *to be a wise agent; he cannot but conclude that he has that knowledge and those faculties which he finds in himself above the other creatures given him for some use and end*." (emphasis added)[969]

The knowledge of the capacity to choose for the good of the whole instead of basing choices on instinct, as animals do, makes man a responsible agent who must use this capacity to make decisions that promote the common good. This capacity was not given to man for no reason—it is there to be used. [970] Locke's essay also defines reason as the faculty of men that makes a distinction between men and beasts: "*The word reason …is that faculty whereby man is supposed to be distinguished from beasts, and wherein it is evident he much surpasses them*" (emphasis added).[971]

Grotius (1625) excludes inferior creatures from the natural law and states that only creatures with reason and speech, able to differ between their instincts and general principles deriving

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[968] See p. 61. Locke further notes that the only aim of the government must be for the public good. No other end is valid. Locke further demonstrates that a society that is not governed by this purpose or guided by reason is like inferior creatures under the dominium of a master who works them for his own pleasure or profit. Being void of reason means being "brutish." "*If men were so void of reason, and brutish, as to enter into society upon such terms*" (Locke II, 163). For further analysis, see p. 94.
[969] Von Leyden, (1956), 35, citing Sidgwick, (1946), 175-178, emphasis added.
[970] See p. 179, p. 181, and p. 183.
[971] Locke, (1689), *Human Understanding*, Bk. IV, Ch. 17; 'Of Reason', Para. 8

from *reason*, are capable of law (emphasis added).[972] In his *War and Peace*, Grotius writes,

> "*For no beings, except those that can form general maxims, are capable of possessing a right, which Hesiod has placed in a clear point of view, observing "that the supreme Being has appointed laws for men; but permitted wild beasts, fishes, and birds to devour each other for food." For they have nothing like justice, the best gift, bestowed upon men.*
>
> *Cicero*, in his first book of offices, says, we do not talk of the justice of horses or lions. In conformity to which, Plutarch, in the life of Cato the elder, *observes, that we are formed by nature to use law and justice towards men only*. In addition to the above, *Lactantius* may be cited, who, in his fifth book, says *that in all animals devoid of reason we see a natural bias of self-love. For they hurt others to benefit themselves; because they do not know the evil of doing willful hurt. But it is not so with man, who, possessing the knowledge of good and evil, refrains, even with inconvenience to himself, from doing hurt. Polybius*, relating the manner in which men first entered into society, concludes, that the injuries done to parents or benefactors inevitably provoke the indignation of mankind, giving an additional reason, that as *understanding and reflection form the great difference between men and other animals, it is evident they cannot transgress the bounds of that difference like other animals, without exciting universal abhorrence of their conduct.* But if ever justice is attributed to brutes, it is done improperly, from some shadow and trace of reason they may possess. But it is not material to the nature of right, whether the actions appointed by the law of nature, such as the care of our offspring, are common to us with other animals or not, or, like the worship of God, are peculiar to man." (emphasis added)[973]

The law of nature is only given to men with the capacity to reason and regulate their own passions for the good of others. Lactantius says that man is above animals if he can reflect on his instincts and passions and choose a course of action, even if inconvenient to himself, so that no one is harmed.[974] For Grotius, the great difference between men and animals is that men must know that doing harm to others transgresses the natural law and there must be consequences to their acts. Grotius agrees that reason is only to be attributed to men who can make choices to avoid harm to others over choices based on instinct like animals seeking only their own preservation. Locke makes this same argument in defining the use of reason—rising above passions even if it is inconvenient for the good of the whole.

A modern confirmation of this view of Locke is Dawall (2006), who adds that for Grotius, some animals can live together and demonstrate the capacity to act out of something like affection or concern for at least some others of their kind. However, Darwall finds that for Grotius, "What is *distinctive about human* beings in this regard is their capacity for and disposition towards a *particular kind of social order, namely, one mediated by the common acceptance of "General Principles*." Thus, for Grotius, the unique difference between human beings and animals is the capacity for and the drive towards a distinctive kind of society, "A Society of reasonable Creatures."[975]

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[972] See Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11. See also Bk. I, Ch. 2, Sec. 1, Subsec. 1 and 2.
[973] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11. For similarity to Locke see p. 189 of this thesis.
[974] Polybius adds that if ever justice is attributed to the animal kingdom, it is only for similarities of reason that do not cover the ability of men to choose justice over passions.
[975] Emphasis added. Dawall, (2006), 7.

Pufendorf argues that natural law is designated only for men with the capacity to reason.[976]

It is not applicable to animals, which are governed by mere impulses and inclinations, but only to men with the capacity to reason (*ratio*), capable of control of all the other faculties.[977]

Locke claims that reason is given for use and to reveal man's dignity, which distinguishes him from beasts. Reason lets man seek more than that which meets his own needs and conveniences and instead judge based on individual circumstances and make decisions for the common good.

In not following the law of reason, Locke claims that a man loses the protection of the law of nature and can be treated as a wild beast that risks the preservation of mankind.[978] It is reason that limits the pure preservation of self and prevents harm such that all men may live in liberty.

4.2 The capacity of all humans to reason except children and madmen

Locke notes that the capacity to know the natural law is in every human. "So plain was it writ in the hearts of *all mankind*," its precepts are reflected in the deepest convictions of man (Locke II, 11). To Locke, natural law "*obliges every one*: and Reason, which is that Law, *teaches all Mankind, who will but consult it*" (Locke II, 6, emphasis added). Locke writes that all mankind can know the law of reason, which reflects the law of nature, if only one wishes and takes the time to consult reason. Not all are rational, but all men have the capacity to use reason.

Grotius also claims that the laws of nature are clear and evident "if only you pay strict heed to them."[979] Ashcraft agrees: "It is not necessary that an individual be 'actually endowed with' certain general qualities or abstract characteristics, *only that he be 'at least susceptible of these specific qualities'*."[980] Thus, men are "equipped" with the "faculties" for reasoning. Every man is born "with a title to perfect freedom."[981] It is in this sense that all men are by nature rational and free, in that they possess the capacity to be so. "Thus we are born free as we are born rational, not that we have actually the exercise of either."(Locke II, 61).[982]

I agree with this interpretation. All humans have the capacity to reason, so all are potentially rational and free.[983] However, Locke also mentions those who cannot use reason, such as children (Locke II, 15, 55, 118) and those with a defective reason (Locke II, 60). "*Children*, I confess, are *not born in this full state of equality, though they are born to it*" (Locke II, 55, emphasis added). And when it comes to madmen, Locke says they cannot follow reason correctly and are to be guided:

> "And so *lunatics and idiots* are never set free from the government of their parents; children, who are not as yet come unto those years whereat they may have; and

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[976] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 2, Cap. 9: "*Quae etiam in naturali statu communem, eamque firmam et uniformem habet mensuram, rerum nempe naturam ...*"
[977] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 2, Cap. 9.
[978] See p. 59. See also p.61 on the treatment of a wild beast.
[979] See p. 177.
[980] Emphasis added. Ashcraft, (1968), 908 citing Locke, (1689), *Human Understanding*. See complete ref. in bibliography.
[981] Locke II, 87.
[982] Locke II, 61. See also; "*We are born with faculties and powers capable of almost anything.*" Locke, (1689), *Human Understanding*. See complete ref. in bibliography. Cited in Ashcraft, (1968), 908.
[983] See p. 176 and p. 179.

> innocents which are excluded by a natural defect from ever having; thirdly, *madmen*, which for the present *cannot possibly have the use of right reason* to guide themselves, have for their guide, the reason that guideth other men which are tutors over them, to seek and procure their good for them." (Locke II, 60, emphasis added)

Children and those with defective abilities to reason are excluded from the law of nature and cannot make judgments of their own as they cannot freely judge the morality of their actions.

Natural law is thus for all humans with the capacity to reason unless there is a clear defect in reason or inability to use it due to age. Von Leyden (1956) states that

> "[t]he *fact that some men cannot reason* and that some of those who can do not *is admitted by Locke, and he refers to idiots and children and to those who because of their emotional nature or because they are lazy or careless, make no proper use of their reason*. In spite of this admission, his next step is to assert that men not only can reason but that reason is their defining property and that therefore their special function is to exercise it, i.e. that they are obliged to use their reason."[984]

Although not all can use reason equally, reason defines us as humans and it must be our purpose to learn how to use it; indeed, we are obligated to do so.

According to Seliger (1963), "Though *born to use the same faculties, men do not invariably nor equally make use of reason*, and hence of their physical endowmen." He confirms that "[t]hus, *not everybody is, or can be, 'a studier of that law*'" (Locke II, 6, 12, 124). He adds however, that reason can be learned: "To the extent that natural law is not studied, or reason fails men, what *natural law implies may still be known through other media*, or acknowledged when *expounded rationally by the student of natural law*." "Locke advocated the *social diffusion and institutional diversification* of the authority to *invoke natural law effective*" (emphasis added).[985] Seliger confirms my interpretation; according to Locke, all men are born with the capacity to reason even if not all are rational. There are other ways to become aware of reason via the social diffusion of the teaching of those who are already rational beings using reason.[986]

Modern authors agree that humans as a species are born with the capacity to reason, even if it is not necessarily used. This capacity to use moral guidance for the good of the whole is incarnated in the nature of all humans and awaits use. This modern interpretation holds that to Locke, humans are obligated to the law of reason because it was given to them for the purpose of being used. It is thus for us to use it for the benefit of the whole while guiding those who do not have the capacity. I further demonstrate below that reason and the law of nature can sincerely be understood only by those with the capacity to reason and who can see above their selfish desires to make decisions to promote the common good (Locke II, 12, 36, 124).[987]

4.3 Natural law becomes clear to those who use the capacity of reason

Locke describes the law of nature as a set of moral guidelines that exist within human

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[984] Von Leyden, (1956), 28, 30, emphasis added.
[985] See Seliger, (1963), 342-344, 347.
[986] Simmons, (1992), Ch. 1. Simmons, (1992), also notes that Locke's definition of a rational being with the specific demonstrations used to define a rational, corporal being may apply not only to human beings, nor *solely* to them, and as such, may include other developed beings as alien, or other kinds of rational corporal beings. Simmons still thinks it is unclear whether it includes angels as non-physical beings. Simmons, (1992), Ch. 1
[987] See p. 178; full analysis begins on p. 176.

nature.[988] Its purpose is to guide us for the peaceful preservation of the whole of mankind (Locke II, 7). According to Locke, the capacity to know the law of reason is within all humanity and each individual: The law of nature is "[s]o *plain* was it *writ in the hearts of all mankind*" (Locke II, 11, emphasis added).

However, even if we all have the capacity to reason, we are still born ignorant to its use (Locke II, 57 see below). To sincerely know the law of nature and the limits of reason, one must practice and use reason: "Thus *we are born free, as we are born rational; not that we have actually the exercise of either:* age, that brings one, brings with it the other too" (Locke II, 61, emphasis added). In his *Essay on Human Understanding*, Locke is clear that it is "a necessity, that men should come to *use of reason* before they get the knowledge of those general truths."[989] Men "yet are always *ignorant* of them, *till they come to the use of reason.*"[990]

Locke indeed writes that after the fall, all men were and are born ignorant to the law of reason (Locke II, 57).[991] All are born with the capacity to reason (Locke II, 11), but in order to come to its use, reason must be exercised (Locke II, 61). As Adam's descendants born without its exercise, it is our purpose to aspire to be as we were created.

The law of nature is argued to be "*plain*" to understand (Locke II, 11). It is even easier to understand than positive law as reason is easier to understand than the "fancies and intricate contrivances of men" (Locke II, 12).

> "[I]t is certain there is such a law, and that too, as *intelligible and plain to a rational creature*, and *a studier of that law*, as the positive laws of commonwealths; nay, possibly *plainer; as much as reason is easier to be understood, than the fancies and intricate contrivances of men*, following contrary and hidden interests put into words." (Locke II, 12, emphasis added)

Locke thus writes that the law of nature is plain and easy to understand to those who use the capacity of reason, or to a "studier of that law." When a person becomes rational and uses reason to guide his acts instead of conflicting appetites and desires, the natural law becomes clear and evident to that person, who becomes sincerely "aware" of its limits or rationale.

Dunn adds that because everyone is required to live under the law of nature, it is logical to infer that every man can "grasp the content of this law."[992] This is also supported by Grotius, who considered the law of nature to be evident. "For the principles of that law [natural law], *if only you pay strict heed to them*, are in themselves manifest and *clear*, almost as *evident* as are those things which we perceive by the external senses."[993]

But even if to Locke the law of nature is to be found within the heart of every man (Locke II, 11), it is "intelligible and plain" only to those who are rational or who actually consult and use reason (Locke II, 12, 124). He explains that the law of nature must be "studied" as it is hidden by the selfish and contrary "fancies" and passions of men. Only those who actually consult reason find it evident and clear.

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[988] Locke, (1689), *Human Understanding*, Bk. 4, Ch. 20, Para. 6; Bk. I. Ch. 3, Para. 1-4.
[989] Emphasis added. Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 12.
[990] Emphasis added. Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 9.
[991] See p. 64. This view of fallen men lacking reason is confirmed by Grotius and Pufendorf. See p.110 and following.
[992] Dunn, (1984), 47.
[993] Grotius, (1625), *War and Peace*, Prolegomena, 39 (emphasis added).

Most men do not make any effort to study the law of nature, Locke notes. They are "biased" by their self-interests (Locke II, 124). To know this law, a person is to be re-educated to think above own selfish contrary needs and act for the good of the whole.[994] As men are blinded by their own self-interests, they cannot apply the law of nature in their own cases.

> "[F]or though the law of nature be *plain and intelligible to all rational creatures*; *yet men being biased by their interest*, as well as *ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.*" (Locke II, 124, emphasis added)

For Locke, the law of nature is "plain" only to "rational creatures."

Locke explains that all humans have the capacity to reason and as such are capable of knowing the law of nature and the moral limits of natural law. However, as most people seek after their own interests and desires, they are biased and misunderstand natural law in their own cases (Locke II, 124). Only those who actually put into practice the use of reason, above their own interests, will understand clearly the law of nature.[995] Further, Locke notes that some men might very well observe the wrongs to the law of nature on others. Still, it is difficult for them to see the breaches of the law of nature when it concerns their own cases. Their priority is self-preservation, which clouds the global view of the whole.

Locke further explains the same[996] when one's own passions and desires hide the right use of reason: "[T]hey who through *passion or interest shall miscite and misapply* it, cannot so easily be convinced of their mistakes" (Locke II, 136, emphasis added). This also demonstrates why for Locke, it is not easy to convince those who do not use reason. They are blinded by their own interests and passions.

In Locke's *Essay on Human Understanding*, he cannot be clearer: "I allow therefore *a necessity, that men should come to use of reason before they get the knowledge of those general truths*, but deny, that men's coming to the use of reason is the time of their discovery" (emphasis added).[997] Men must use reason before they can know the law of nature. He adds that this does not mean that using reason leads to discovery—the use must be constant.[998] Moreover,

> "the *use of reason discovers to a man what he knew before*: and if men have those innate impressed truths originally, and before the use of reason, and yet *are always ignorant of them, till they come to the use of reason, it is in effect to say, that men know, and know them not, at the same time*." (emphasis added)[999]

The law of reason can be found within each individual, but men cannot know the clear inferences of the law of nature until they start to use and practice reason. Locke explains why the use of reason is required: "*till after they come to the use of reason*, those general abstract ideas are *not framed in the mind*" (emphasis added).[1000] Within this paragraph Locke repeats that natural law must be deduced by individual use practice of reason. Before that, natural law ideas will not be clear in the mind because humans are blinded by self-interests, appetites, and

[994] Reason must be exercised. Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 1-28. See the government of passions on p. 183.
[995] See p. 183.
[996] Full citation on p. 55.
[997] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 12.
[998] See p. 179.
[999] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 9.
[1000] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 12.

vices (Locke II, 12, 124).

Even if all men are born with the capacity to reason (Locke II, 11), they are still born ignorant to the use of reason (Locke II, 57), so reason must be exercised (Locke II, 61) in order for one to sincerely know the natural law. There is thus "*a necessity, that men should come to use of reason before they get the knowledge of those general truths*" (emphasis added).[1001] For Locke, natural law can be clear, but most men "*are always ignorant of them, till they come to the use of reason*"[1002] (emphasis added). Locke explains that the precepts of natural law can become very clear to those who use reason instead of heeding selfish desires and instead act for the good of the whole (Locke 12, 124).

4.4 Necessity to continuously consult and follow reason

A natural inference is that being rational is not only a question of having the capacity to reason given to all humanity in common. Consulting and putting into practice "empirical reason" is required for one to be "rational." All rational creatures are free to consult their reason and order their actions with no dependency on the will of another (Locke II, 6), if kept within the limits of natural law (Locke II, 31) so that no one is harmed.[1003]

As seen above, this conclusion can mainly be deduced from Locke's *Essay on Human Understanding*: "[T]he use of reason discovers to a man what he knew before: … always ignorant of them, *till they come to the use of reason*" (emphasis added).[1004] Within this paragraph and the following one, Locke proves that natural law maxims cannot be innate and must be deduced by the individual who practices reason. Locke says that reason is not the mere deductive faculty of known truths from principles already known as men cannot know those principles and not know them at the same time. The use or practice of reason thus is necessary to make this faculty valid.

Locke continues,

> "*because till after they come to the use of reason,* those general abstract ideas are *not framed in the mind*…I allow therefore *a necessity, that men should come to use of reason before they get the knowledge of those general truths,* but deny, that men's coming to the use of reason is the time of their discovery . . . . I agree then with these men of innate principles, that there is *no knowledge of these general and self-evident maxims in the mind, till it comes to the exercise of reason.*" (emphasis added)[1005]

The use of reason is necessary to discover the principles of natural law, and the first use will not necessarily lead to its discovery. The discovery and initial practice of reason is not sufficient. A regular practice or '*exercise*' of reason is required. Locke shows that the natural law is demonstrative in nature and can only be acquired by experience.[1006]

In addition to the references demonstrated above, Locke shows that it is not only the capacity to know the law of reason that is required but also "*living within the rules of it* . . . .[Men must be] *capable of knowing the law, and so living within the rules of it*" (Locke II, 60, emphasis

[1001] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 12.
[1002] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 9.
[1003] See chapter on limits, p. 210.
[1004] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 9.
[1005] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 12. See p. 178.
[1006] See p. 165.

added).[1007]

As seen above, Locke also says humans are all "*born free, as we are born rational; not that we have actually the exercise of either*" (Locke II, 61, emphasis added). The capacity to reason is within us all individually but it should be developed. Reason was given to men to be used,[1008] so a natural inference is that all humans are to aspire to develop the capacity of reason so as to express their higher nature.

Adam and Eve were created "in full possession of their reason" and as such able to govern their actions according to the law of reason, implemented within each and follow "actions according to the dictates of the law of reason." They could thus guide all actions according to "the law of reason." It is only after the fall that humans are born "weak" and "helpless" and "unable to follow reason."

> "*Adam was created a perfect man, his body and mind in full possession of their strength and reason*, and so was *capable*, from the first instant of his being to provide for his *own support and preservation, and govern his actions according to the dictates of the law of reason* which God had implanted in him. From him the world is peopled with his descendants, who are all born infants, weak and helpless, without knowledge or understanding: but to supply the defects of this imperfect state, till the improvement of growth and age hath removed them." (Locke II, 56, emphasis added)[1009]

If men were created with the full use of reason, it is only logical to infer that all descendants are to aspire to be like Adam and Eve and go further than simply accept the capacity to reason; they must follow reason in all actions so as not to be weak and helpless.

Additionally, to Locke, in spite of all being born with same capacity to reason, the "greater part" of humanity does not use and practice reason. Most humans are biased and governed by their own passions (Locke II, 123, 124, 12; Locke (1689)).[1010] Locke thus implies that man should aspire to use and practice the law of reason. The *Second Treatise* also states,

> "*Is a man under the law of nature*? What made him free of that law? what gave him a free disposing of his property, according to his own will, within the compass of that law? I answer, a state of maturity wherein he might be *supposed capable to know that law, that so he might keep his actions within the bounds of it*. When he has acquired that state, he is presumed to know how far that law is to be his guide." (Locke II, 59, emphasis added)

Only when reason is followed as a guide for all actions can men know the law of nature. Locke specifically says that "[w]hen he has acquired that state, *he is presumed to know how far that law is to be his guide, and how far he may make use of his freedom*" (Locke II, 59, emphasis added). The rational person must know the limits of no harm to anyone and act within the bounds of reason. A rational creature is to use reason to guide all his actions and abide by the limitations of natural law.

The above-mentioned references within Locke's *Second Treatise* above clearly demonstrate that for Locke, it is not only the capacity to reason but also the practice of it that directs to the natural law and its limitations. Locke's state of nature can only be survived "(if) keeping

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[1007] See p. 171. See further Ref. on footnote No. 1054.
[1008] See p. 172.
[1009] See also Locke II, 57 and p. 64.
[1010] Locke, (1689), *Human Understanding*, Bk. 1, Ch. 2, Para. 24 and 27. See p. 89 and p. 90.

within the bounds, set by reason" (Locke II 31). The guidance of reason and natural law limitations in this liberating state allow it to continue.[1011]

4.5 The law of nature as a dictate of "right reason"

Locke demonstrates that the dictates of the right rule of reason direct one to the natural law and its limitations. "*[R]eason and common equity*" is that measure God has set for the actions of men, for their *mutual security*" (Locke II, 8, emphasis added). Violating the law of nature is to be "varying from the *right rule of reason*" (Locke II, 10, emphasis added). Reason is "the common rule and measure God hath given to mankind" (Locke II, 11). "*[R]eason*[is] given to be the rule between man and man, and the common bond whereby human kind is united into one fellowship and society" (Locke II, 172, emphasis added). Reason teaches "*the way of peace*" (Locke II, 172, emphasis added).

Locke relates the moral state of nature to "men living together *according to reason*" (Locke II 19, emphasis added). A peaceful state of nature requires the guidance of reason and its limitations that respect of rights of all. Reason thus allows a peaceful state of nature.[1012] This view of reason as preserving peace is asserted by Pufendorf, to whom natural law is the dictate of the rational and sociable nature of man, given to man by God, without which no peaceful fellowship could ever exist.[1013]

Locke also writes, "And so lunatics and idiots … madmen, which for the present cannot *possibly have the use of right reason to guide themselves*, have for their guide, the reason that guideth other men which are tutors over them, to seek and procure their good for them" (Locke II, 60, emphasis added). Right reason leads to the discovery of natural law; so those without right reason are not under it. "Right reason" is specifically mentioned as directing or guiding to natural law; those who cannot use "right reason to guide themselves" must be guided by others who do have this use for the good of the whole.

Natural law, discovered by right reason, represents the "common equity." It gives humanity mutual security against those who do not respect natural law and harm others. Locke's freedom to enjoy the liberties of the state of nature are thus limited by the guidance of reason and the limitations of natural law. Without reason, men would be no better than animals, acting only in their private interests and to satisfy base corporeal pleasures, with complete disregard for others. Locke would argue that this is the current state of humanity.

Locke proposes the use of "right reason" to discover the natural law. Grotius (1625) clearly says that the dictates of right reason lead to the natural law: "Natural right is the dictate of *right reason*, showing the *moral turpitude, or moral necessity*, of any act from its agreement or disagreement with a rational nature."[1014] Grotius also states that right reason entails pursuing moral justice as what is unjust is repugnant to reason: "'*what is just', the dikaion, the iustum*, while what is not-right or *unjust is against reason*; 'The *unjust is what is repugnant to the society of rationales"*.[1015]

Hong notes that "right reason" appears often yet innocuously in Grotius's texts. In *De jure*

[1011] See p. 64 for extensive references. See also footnote No. 1054, p. 187.
[1012] See analysis of Locke's moral state of nature and the guidance of reason on p. 73.
[1013] Pufendorf, (1672), *De iure Naturae*, Vol. I, Lib. 6, Cap. 18: "*Quae cum rationali et sociali natura hominis ita congruit, ut humano generi honesta et pacifica societas citra eandem constare nequeat*." See also Locke II, 3, 13.
[1014] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10, emphasis added.
[1015] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 3, emphasis added. See p. 111.

belli ac pacis, the phrase appears 10 times in the first edition and twice more in the last edition of 1642. Hong claims that Grotius's defines "right reason" as

> "the rational faculty which makes possible the equitable balance of the self-love and the love for others in civil society conditions. Right reason is 'an intellectual act of understanding' derived from the truth . . . . "*[R]ight reason should be used for the common good* and men are truly capable of using this faculty even without any assistance of priesthood who communicate with God" (emphasis added).[1016]

This supports the notion that Locke's right reason is something above judgment and intellectual capacities. Hong also supports the balance of selfish pleasures with the good of others; reason maintains this balance for the common good. I differ from Hong in that I argue Locke's right reason directs one to moral judgment, which balances the self and others. I argue that Locke prefers placing others above the self to avoid harm to anyone.

Aristotle (350 B.C.E.) as an early natural law author, explains that practical wisdom comes from practicing and following the guidance of reason and makes a person good, just, and noble. This will point man in the right direction:

> "*Practical wisdom is the quality of mind concerned with things just and noble and good for man*… practical wisdom not for the sake of knowing moral truths but for the sake of becoming good…Again, the work of man is achieved only in accordance with practical wisdom as well as with moral virtue; for virtue makes us aim at the right mark, and *practical wisdom makes us take the right means.*" (emphasis added)[1017]

Macpherson (1962) uses Locke's development of unequal property ownership to reach the conclusion that only property owners are full members of the society, deserting all rights; he sees Locke as the defender of a divided society with property owners on the top.[1018] But Dunn (1969) argues that "[i]t is not true that Locke regarded unlimited appropriation as essence of rationality. *The law of reason was a moral law and unlimited appropriation was at best, a morally perilous calling*" (emphasis added).[1019] Dunn interprets Locke as claiming that all men have the capacity to reason but are liable to sin due to prevailing passions. There is no division among classes but rather moral differences among those who are either guided by their passions or their reason:

> "[A]lthough all men, or at least adults who were not 'idiots', were rational and hence capable in principle of making these calculations correctly, they were also all liable to sin, driven by their passions, and hence likely to misapprehend the prudential obligations to which they were subject. Some men were more sinful than others….Locke does accept the reality of differential rationality. But the differential is not a class differential nor a purely intellectual differential, but rather a moral differential."[1020]

For Dunn, Locke's right use of reason is moral in nature. The difference is between those who

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[1016] HONG, *Right reason for natural law*, 3 (find in bibliography under internet sites). See also Salter, (2001), 537-555, entire article. He further confirms that for Grotius, reason is the virtue of the Lord that gives man the capacity to balance self-interests with those of the common good.

[1017] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. VI, Ch. 12. See p. 205. See full analysis of Aristotle's use of reason and comparison with Locke's on p. 198.

[1018] Macpherson, (1962), 200. See analysis on p. 41. See also his explanation of a divided society on p. 125.

[1019] Dunn, (1969), 248.

[1020] Dunn, (1969), 196.

are governed by their passions and those who can control them and be governed by reason. Locke states that knowing the law of nature or right reason keeps one's actions "within the bounds of it."(Locke II, 59) For Locke, all actions of men are to be guided by the bounds of reason. Further, "When he has acquired that state, he is presumed to know how far that law is to be his guide, and how far he may make use of his freedom." (Locke II, 59) The rational person for Locke is thus supposed to know and keep his actions within the bounds of this reason. A rational creature's actions are guided by reason and the limits of natural law:

> "Is a man *under the law of nature*? … be supposed capable to know that law, that so he might *keep his actions within the bounds of it. When he has acquired that state, he is presumed to know how far that law is to be his guide, and how far he may make use of his freedom,* and so comes to have it; till then, some body else must guide him, who is presumed to know how far the law allows a liberty. If such a state of reason, such an age of discretion made him free, the same shall make his son free too." (Locke II, 59, emphasis added).

The guidance of reason and natural law limitations allow the liberating state of nature to continue.

According to Forde (2001), Locke claims that man is to pursue lasting happiness under the limits of reason—"the perfection of our nature is the pursuit of happiness in the most reflective or rational manner possible."[1021] To Fuller (1940), natural law is "reason…push(ing) as far a head as it can."[1022]

The right rule of reason can also be understood when Locke compares Adam and Eve, created with the full capacity of reason, and those after the fall who do not. The full capacity of reason implies an understanding and knowledge of the common good whereas less than full capacity implies ignorance and weakness (see Locke II, 56[1023]; see also Locke II, 57[1024]). It is only reasonable that men should aspire to be as they were designed to be, using their full capacity of right reason for their own mutual security, peace, and safe preservation. All references demonstrated above imply that acquiring the use of right reason is a state of responsible maturity to obey the limits of natural law for the good of others.

4.6 **The use of reason for the government of passions**

Reason is a characteristic of human nature shared by all humans in common and individually. The recognized meaning is the intellectual capacity of the mind to go above the mere reflection of cause and effect or "associative thinking" of habit or past experience that is also found among animals.[1025] The distinctive use of reason in humans adds a personal deduction based on experience, circumstantial facts, and repeated observation: "Reason is a term that refers to the capacity human beings have to make sense of things, to establish and verify facts, and to change or justify practices, institutions, and beliefs."[1026]

I demonstrate that Locke's meaning of reason implies something additional: the "government" of certain passions and desires of the self so that man can make decisions

[1021] Forde, (2001), 400.
[1022] Fuller, (1940), *The Law in Quest of Itself*, 103, cited in S.L.R, (1957), 512.
[1023] See p. 180.
[1024] See p. 64.
[1025] As such, humans who only use habit or past experience do not necessarily use reason. See Locke & Aristotle within this ch.
[1026] See Kompridis, (2000), 271-295.

following the dictate of reason and avoid any harm to others—"*a power of denying ourselves the satisfaction of our own desires, where reason does not authorize them*."[1027]

> "The word *reason in the English language* has *different significations*: sometimes it is taken for *true and clear principles; sometimes for clear and fair deductions from those principles*; and *sometimes for the cause*, and particularly the final cause. But the *consideration I shall have of it here, is in a signification different from all these: and that is, as it stands for a faculty in man, that faculty whereby man is supposed to be distinguished from beasts, and wherein it is evident he much surpasses them.*" (emphasis added)[1028]

Locke interprets reason differently than is typical in the English language. Locke's reason is this same faculty unique to men that distinguishes between men and beasts.[1029] The use of reason is so attached to human nature that no one can renounce it without sinking to the level of beasts (Locke II, 8, 10, 11, 16[1030]; Locke II, 63[1031]; Locke II, 163[1032]; Locke II, 172).[1033]

Grotius, Locke's predecessor and teacher of natural law, supports Locke's moral use of reason: "that the supreme Being has *appointed laws for men*; but permitted wild beasts, fishes, and birds to *devour each other for food*. For they have nothing like *justice, the best gift, bestowed upon men.*"[1034] He also notes that it is the capacity to reason that distinguishes animals and men and that the law of nature is only given to men with the capacity to reflect and use reason over self-interests, for the good of others. [1035]

Rabkin (1997) analyses Grotius in detail and notes that "*[h]uman beings had been given the capacity to step above instinct. Granting that man may be referred to as an animal*, "he is an extraordinary animal, differing far more from all other animals than they differ in kind from one another" (emphasis added).[1036]

Pufendorf (1672) emphasises that animals are governed by impulses and inclinations while men possess the capacity to reason (*ratio*) to govern their inclinations.[1037] Murphy (1982) agrees with Pufendorf on

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[1027] Locke, (1693), *Education*, Para. 38, emphasis added. See p. 191.
[1028] Locke, (1689), *Human Understanding*, Bk. IV, Ch. 17; 'Of Reason', Para. 1-24.
[1029] See reason as distinguishing men from beasts on p. 172.
[1030] See p. 59.
[1031] See p. 61.
[1032] See note 505 and p. 94.
[1033] See p. 61.
[1034] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11, emphasis added. See p. 174.
[1035] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11. See p. 189.
[1036] Grotius thus argued for certain "*traits peculiar to the human species*," more than instincts, as the "desire *for society, that is, for life in a community; not any sort of life, but one that is peaceful and organized to suit the measure of his intelligence, with persons of his own kind. The Stoics called this trait 'friendliness' [or] 'sociability'*." For Grotius, the authority of natural law is given by "the *very nature of man*, which even if we had *no lack of anything* would *lead* us into the *mutual relations of society*" (Prol. 16). The "source of law properly so called' is 'maintenance of the social order' (Prol. 8), which is based on 'an impelling desire for society, for the gratification of which [man] alone among animals possesses a special instrument, speech" (Prol. 7). Natural law is thus discovered by that very nature of every human that leads to mutual relations of society. Cited in Rabkin, (1997), 297-298.
[1037] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 2, Cap. 9.

> "the essential distinction between man and other animals. *The distinguishing feature is reason, by which Pufendorf meant the power to discern the good rather than the faculty of logical thought. The lower animals' actions are determined by desire and passion.*
>
> *They are not constrained by an inward moral sense. Man's dignity, by contrast, lies in a voluntary conformity to rule.*" (emphasis added)[1038]

He asserts that Pufendorf distinguishes man from animal by the use of power to rule over passions and desires and make a moral decision for the good of others.

After declaring that his own use of reason is different than the usual meaning, Locke continues as follows:

> "But how can these men think the use of reason necessary, to discover principles that are supposed innate, *when reason (if we may believe them) is nothing else but the faculty of deducting unknown truths from principles, or propositions, that are already known? . . .* [That] is to say, that the use of reason discovers to a man what he knew before." (emphasis added)[1039]

Reason is not the simple ability to deduce truths from known principles. He demonstrates that it is this same unique faculty that distinguishes men from beasts. To Locke, reason is that which gives men the freedom of choice to go above the mere instincts of self-preservation and passions; it is the ability to make the moral decision that avoids harm to anyone, in spite of certain inconveniences to the self. Man must be "able to *deny himself his own desires*, cross his own inclinations, and *purely follow what reason directs as best*, tho' the *appetite lean the other way*" (emphasis added).[1040] To Locke, when a selfish desire comes up, one is to wait and consider its consequences according to reason and the greatest good. He writes,

> "[S]uspend *this prosecution in particular cases, till they have looked before them,* and informed themselves whether that particular thing which is then proposed or desired lie in the way to their main end, *and make a real part of that which is their greatest good*. *…suspend their desires, and stop them from determining their wills to any action, till they have duly and fairly examined the good and evil of it, as far forth as the weight of the thing requires.*"(emphasis added)[1041]

To support this argument, I begin with Locke's own words from the *Second Treatise*. Locke finds the law of nature easier to understand than positive law, "possibly *plainer*" for those who can control their appetites and conveniences, "*as much as reason is easier to be understood, than the fancies and intricate contrivances of men*, following contrary and hidden interests put into words" (Locke II, 12, emphasis added).[1042]

Grotius also says that selfish impulses and passions are contrary to human reason. In order to act by reason, one has to go above passions and follow moral boundaries for the good of the whole:

> "God by the Laws which he has given, has made these very principles more clear and

[1038] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 15. Para. 33; Vol. II, Lib. 3, Cap. 19. See Murphy, (1982), 487.
[1039] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 9 (p. 128 and p. 177).
[1040] Locke, (1693), *Education*, Para. 33. See p. 191.
[1041] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 53. See p. 191.
[1042] See p. 177, citation on p. 29; and p. 178.

> evident, even to those who are less capable of strict Reasoning, and has *forbid us to give way to those impetuous Passions, which, contrary to our own Interest, and that of others, divert us from following the Rules of Reason* and Nature; for as they are exceeding unruly, it was necessary to keep a strict Hand over them, and to confine them within certain *narrow Bounds.*"[1043]

Hong says of Grotius, "To be sure, he writes some years later, this *rational faculty has been darkly beclouded by human vice*; yet not to such a degree but that rays of the divine light are still clearly visible, manifesting themselves especially in the mutual accord of nations." Human reason is "beclouded by human vice" (emphasis added).[1044]

Pufendorf (1672) also supports the use of reason over the government of passions:

> "*Where reason rather than passion controls the actions of princes, a universal measure of judgment is operative*. It reveals the general rules of living with others. Man is, admittedly, divided. But he knows that submission to his immediate anxious desires leads to his destruction and the ruin of those under his care. *The long-range view, encouraged by reflective reason, brings peace and security as well as personal respect.*"(emphasis added)[1045]

For Pufendorf, natural law is dictated by reason rather than passions, and it preserves the peace, security, and respect of man. Pufendorf also advocates the common good, without the interference of "the ravings of his ill-purged brain or the disordered passions of his mind."[1046] The common good must not be biased by the "passions of mind."

To Locke, men are "biased by their interest" (Locke II, 124). Locke explains that the law of nature is to be found within each and "plain" to all "rational creatures." Men do not study and practice reason, and they make their own selfish interests and passions priorities; thus, they fail to follow reason and apply natural law in their lives. The fancies of men keep them from acting for the good of the whole (Locke II, 124).[1047] Locke states that it is necessary to reach a "*forbearance of a too hasty compliance with our desires, the moderation and restraint of our passions*, so that our understandings may be free to examine, and *reason unbiased give its judgment*" (emphasis added).[1048]

4.6.1.1 Moral choice of Reason and Natural law limits are "nobler" in nature than the satisfaction of bodily desires

To Locke, self-interests are baser desires because they blind man to reason, which is nobler in nature. To know reason, one must control selfish fancies and passions. The use of reason with its moral limitations is thus nobler than fancies and appetites (Locke II, 12, 124). Reason is given for humanity's safe preservation and peaceful and mutual protection (Locke II, 7, 8).[1049] Locke recognizes that to duly represent human dignity in its excellence, the body is to listen to the "mind" or to obey the guidance of reason:

[1043] Tuck, (1979), 9, citing Grotius, *Preliminary Discourse*, XIII. (emphasis added).
[1044] See HONG, *Right reason for natural law*, 1, 3 (find in bibliography under internet sites). See also Salter, (2001), 537-555, entire article.
[1045] Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 2. Cap. 9.
[1046] Pufendorf, (1672), *De iure Naturae* ,Vol. II, Lib. 3, Cap. 13-15.
[1047] See citation on p. 32 and p. 177.
[1048] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 54. See p. 191.
[1049] See further analysis on those who can use reason on p. 176.

> "Due care being had to keep the *body in strength and vigour, so that it may be able to obey and execute the orders of the mind*; the next and principal business is, to set the mind right, that on all occasions it may be disposed to consent to *nothing but what may be suitable to the* ***dignity and excellency of a rational creature***." (emphasis added)[1050]

This understanding of the dignity of reason over self-interests is evident in Grotius, who explains,

> "(T)here are certain first principles of nature, called by the Greeks the first natural impressions, which are succeeded by other principles of obligation superior even to the first impressions themselves . . . the care, which every animal, from the moment of its birth, feels for itself and the preservation of its condition, its abhorrence of destruction, and of everything that threatens death, a principle of nature . . . . But fr*om the knowledge of these principles*, a notion arises of their being agreeable to ***reason, that part of a man, which is superior to the body***. *Now that agreement with* **reason, which is the basis of propriety, should have more weight than the impulse of appetite; because the principles of nature recommend right reason as a rule that ought to be of higher value than bare instinct.** As the truth of this is easily assented to by all men of ***sound judgment without any other demonstration***, it follows that in inquiring into the laws of nature the first object of consideration is, what is agreeable to those principles of nature, and then we come to the *rules, which, though arising only out of the former, are of* higher dignity, and not only to be embraced, when offered, but pursued by all the means in our power."[1051]

Grotius thus demonstrates with the help of other sources that reason is superior in importance, value, and dignity to the impulses of appetites. He thinks men with sound judgment can come to this conclusion. All matters deriving from the use of reason are of more value and "dignity" than selfish appetites of the body.

Grotius states that it was with the extension of the appetites that each started to desire "subtle inventions no way conducive to the good of life; and using their strength *not to promote justice",* but [to] *'gratify their appetites*'" (emphasis added).[1052] They did not preserve others and the whole. Turning away from simple needs tempted men to want more than they needed because greed overtook the use of reason for the good of the whole. Appetites of the self are thus lower in nature than reason.

Murphy (1982) agrees with Pufendorf's view of the dignity of reason: "*Man's dignity, by contrast* (to animals), *lies in a voluntary conformity to rule.…The natural liberty of man is affirmed, but as conditioned by reason and restrained by natural law*....Natural law requires that each man should treat another as his equal by nature, as much a man as he is himself" (emphasis added).[1053] To Pufendorf, man's superior dignity derives from the moral choice to

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[1050] Locke, (1693), *Education*, Para. 31. See p. 191. See also Aristotle:" *Practical wisdom is the quality of mind concerned with things just and noble and good for man".* For this Ref. and more see p. 203-205.

[1051] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1 (emphasis added). He cites ancient Hebrew writings that claim that man was created with simple material needs. This simplicity freed men from the chains of passions, which leads away from reason and promoting the common good.

[1052] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2.

[1053] Murphy, (1982), 487, citing Pufendorf, (1672), *De iure Naturae*, Vol. II, Lib. 3, Cap. 15, Para. 33; Vol. II, Lib. 3, Cap. 19.

subdue instincts and to conform to the rule of reason.[1054]

Moreover, giving priority to passions and self-interests necessarily leads to the misapplication of reason: "[T]hey who through *passion or interest shall miscite, or misapply* it" (Locke II, 136, emphasis added). One cannot apply justly the law of reason in this case for it will always be misapplied to reflect selfish interests; the purpose of the law of nature is the preservation of the whole, not individual motivations. To Locke, going above passions and self-interests leads to a better ability to know and follow reason justly.

Within the same paragraph, Locke says that those who misapply reason due to the priority of self-interests "cannot so easily be convinced of their mistakes" (Locke II, 136, emphasis added). With the help of their given reason, men can see mistakes in others but not in their own lives due to being led by their passions, which blinds them to reason. Forde (2006) confirms this:

> "If we mark Locke's precise words, it is not that men in the state of nature have failed to grasp the content of the natural law per se; *rather, they fail to acknowledge its applicability to their own cases. Men may recognize breaches of equity in others, but fail to apply it fairly, or perhaps even to recognize it, in their own cases*. It seems that their 'lack of study' amounts to a lack of reflection on the reciprocity demanded by the law more than a failure to grasp its fundamental principle." (emphasis added)[1055]

To Locke, it is "a necessity, that men should come to use of reason before they get the knowledge of those general truths" (emphasis added).[1056] Natural law is clear, but most men do not use reason, so they "are always ignorant of them, till they come to the use of reason" (emphasis added).[1057] There are thus few followers of reason and natural law. Locke states that in spite of all being born with same capacity to reason, the "greater part" of humanity do not use and practice reason. Most humans are biased and governed by their own passions (Locke II, 123, 124, 12; Locke (1689)).[1058] Locke further confirms that most human beings follow customs and habits in their thoughts and actions rather than reason.[1059] According to Locke, only after using reason can one truly know the meaning of reason for the good of the whole.

Locke notes that reason brings freedom of choice instead of slavery to the passions (Locke II, 63, 57).[1060] Locke also writes of the "[g]overnment of our passions the right improvement of liberty."[1061] Being free involves subduing desire until one has performed a calculation of the consequences of an action: "[T]he principal *exercise of freedom* is to stand still, open the eyes, look about, and take a view of the *consequence* of what we are going to do, as much as the

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[1054] Locke asserts that men are to follow the findings of reason (Locke II, 57, 56, 60; p. 64, p. 171; p. 180). Von Leyden, (1956) asserts that this conclusion stems from the matter-of-fact proposition that all men are rational: "in *order to be truly men, men must be rational*"; and "[h]aving shown that *man's reason can lead to the discovery of certain rational principles, he goes on to conclude that man is morally obliged to accept these findings of his reason.*" Von Leyden, (1956), 28, 30. For Von Leyden, a rational person has to accept and follow the findings of reason. See Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10; see also p. 111.
[1055] Forde, (2006), 246.
[1056] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 12.
[1057] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 9.
[1058] Locke, (1689), *Human Understanding*, Bk. I, Ch. 2, Para. 24 and 27. See analysis on p. 89 and p. 90.
[1059] Locke, (1663), *Questions Concerning the law of nature*, Bk. I, Ch. 3, Para. 24-25; Bk. II, Ch. 28, Para. 12; Bk. IV, Ch. 16, Para. 4.
[1060] See p. 169.
[1061] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 52.

weight of the matter requires" (emphasis added).[1062] Ashcraft (1986) confirms that for Locke, the ability to govern the passions with the help of reason is that which makes a person free and independent: "When Locke raises the issue of what determines whether an individual is a 'free', 'equal', 'independent' person under the law, natural or civil, he gives the same reply. It is his "reason and the ability to govern himself."[1063] Reason is the ability to govern baser passions and gain freedom of choice.

Locke's *Second Treatise* admits that his definition of reason deviates from the intellectual capacity of individual observation[1064] but rather implies a person foregoing certain conveniences of the self that prevent the correct application of reason (Locke II, 12, 124) and instead making a decision that avoids harm to others (Locke II, 136, 6, 7, 31).

Locke posits that the avoidance of any harm is the most important principle of natural law: "*[N]o one ought to harm another in his life, health, liberty, or possessions*" (Locke II, 6, emphasis added). A man "may not, unless it be to do justice on an *offender, take away, or impair the life,* or what *tends to the preservation* of the *life, the liberty, health, limb, or goods of another*" (Locke II, 6, emphasis added). Men thus cannot interfere with others rights if it might harm their preservation in any way: "And that all men may be restrained from invading others rights, and from doing hurt to one another" (Locke II, 7). Locke explains that no one can "ingross" anything "to the prejudice of others" (Locke II, 31).[1065]

Grotius again demonstrates that the use of reason avoids harm to others at the expense of convenience. He cites Lactantius, who says that man is above animals so that he can reflect on his instincts and passions and choose a course of action that avoids harm: "*[M]an, who, possessing the knowledge of good and evil, refrains, even with inconvenience to himself, from doing hurt.*"[1066] Locke makes the same argument.

Grotius explains that only humans have the ability to do more than follow instinct and passions but instead reflect on choices and judge whether satisfying the self would cause harm. It is this ability that creates the obligation to avoid harm.

Reed (2006) says that Grotius's "right reason" is argued "not (to) refer, but to a faculty of judgment, that is, to a sum of intellectual powers, but to the faculty by which inferences may be drawn regarding God's purposes in creating all things for the good of the human race on general."[1067] This confirms that the definition of reason includes the moral capacity to think for the whole of mankind rather than the self alone. Locke makes a similar use of reason as Grotius, noting that humanity has a special trait above animals—he can master the passions and sacrifice convenience for the good for the whole.[1068] The connection between reason and morality is a natural law concept that can be found in natural law authors before Locke as well as in modern literature. Tully (1980) comments on Locke: "*Is every man's own interest the basis of the law of nature*"? Locke defends natural law as the foundation of morals; he notes that morality is not based on self-interest alone. Tully claims that for man to be morally good to Locke, "the right of an action does not depend on its utility; on the contrary, its utility is a result of its rightness."[1069] Tully explains that for Locke, "the first reason for rejecting utility

[1062] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 69. See p. 191.
[1063] Ashcraft, (1986), 581. See other modern references to reason and freedom of choice on p. 169.
[1064] Locke, (1689), *Human Understanding*, Bk. IV, Ch. 17, 'Of Reason', Para. 1-24.
[1065] See p. 123; see precepts of natural law on p. 55.
[1066] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 11. See p. 174.
[1067] Reed, (2006), 41-43.
[1068] To avoid repetition, see p. 111.
[1069] Tully, (1980), 215.

or self-interest is that, as a matter of fact, the dutiful actions of life are not binding because they are immediately advantageous to the agent."[1070]

Tully (1980) demonstrates from *Essays on the Law of Nature* Locke's recognition that the best virtues are acquired by doing good to others while incurring a loss. "In fact a *great number of virtues, and the best of them, consist only in this: that we do good to others at our own loss*" (emphasis added).[1071] Tully thus supports my argument on Locke's use of reason and the notion that virtue comes from doing good to others even while incurring personal loss.

Simmons (1992) notes that one of Locke's texts shows that reason and morality are not about selfish desires but "the preservation of others."[1072] "[P]rinciples of actions indeed there are lodged in men's appetites, but these are so far from being innate moral principles, that if they were left to their full swing *they would carry men to the overturning of all morality*" (emphasis added).[1073] Being led by self-interests is far from following reason; it could even overturn the value of morality. Simmons confirms that Locke meant that selfish desires alone may overturn moral codes. For Locke, the law of reason benefits the individual as each enjoys a better, more peaceful environment.[1074] Simmons concludes that to "make the best sense of his texts if we ascribe … the moral law is only the law of reason for mankind, not for persons taken separately." This is because "private advantage so often leads away from the achievement of 'public happiness'."[1075] This supports my understanding of Locke's notion that to understand reason, one must subdue self-interest, which blinds man to the common good (Locke II, 12,124, 136).

Dunn (1969) also says that to Locke, God represents reason:

> "God is determined by what is best (Locke, *Essay*, II, XXI, 49)...because his essence is Reason…God is actually reasonable because he is himself pure Reason. Human beings are only potentially and intermittently rational, because although their will is determined by what they perceive to be best in the sense of most hedonically fulfilling, their rational apprehension and their skill at hedonic calculation are *clouded by the corrupt passions released by the Fall*. Reason and instinct cease to go together." (emphasis added)[1076]

God is pure reason without the corrupted passions of men. So Dunn agrees with Locke's assertion that acting on self-interests is contrary to the use of reason and blinds men to the right use of reason for the good of the whole.

Modern natural law authors also impose obligations for the good of the whole like Locke.[1077] Locke's references from the *Second Treatise* demonstrate the use of reason over the

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[1070] Tully, (1980), 207-11.
[1071] Tully, (1980), 101, 207. He finds that accumulation of private property for the self violates morality: "*[I]f the ground of duty were made to rest on gain and if expediency were acknowledged as the standard of rightness, what else would this be than to open the door to every kind of villainy?*" (p. 209).
[1072] Simmons, (1992), 36-39.
[1073] See Simmons, (1992), 36-39.
[1074] See also Locke, (1693), *Education*, Para. 33, 45, 52, and 200. Morality is demonstrated to be about controlling selfish desires, not satisfying them. See also Yolton, (1985), 2-23; Tarcov, (1984), 85-93, 189-90; Tully, (1980), 103-104.
[1075] Simmons, (1992), 39, citing Pangle, (1988), 190-91, 211. See also Simmons, (1992), 36-39.
[1076] Dunn, (1969), 193-194. See Locke Ref. footnote No. 19, p.8.
[1077] See p. 210.

government of passions to avoid harm. Locke's predecessors make the same argument. But Locke's text on education and his *Essay on Human Understanding* are best used to support his theory. I also support my interpretation using other important natural law authors who confirm that Locke's use of reason was not new but rather was a widespread natural law idea. As further support, I will show that even the utilitarian philosophy that seeks to defy natural law finds common ground with Locke's use of reason.

4.6.1.2 Corroboration from Locke's other texts

4.6.1.2.1 Locke's Reason is acquired with experience (or habit) [1078]

Locke's text on education[1079] demonstrates that reason for Locke is acquired with experience (or habit). Locke explains how to encourage the use of reason in children. For Locke, a virtue is a mixture of self-denial and rationality:

> "*§ 33*. "As the strength of the body lies chiefly in being able to endure hardships, so also does that of the mind. And the *great principle and* ***foundation of all virtue*** and worth *is placed in this: that* ***a man is able to deny himself his own desires, cross his own inclinations, and purely follow what reason*** *directs as best,* ***tho' the appetite lean the other way.***" (emphasis added)[1080]

This is a great demonstration of the argument regarding Locke's definition of reason. Locke unmistakably states that a man is to learn how to "deny himself" his "own desires" and "cross his own inclinations" in order to "purely" follow the guidance of "reason" or "what reason directs as best" in spite of the fact that his own appetites would lead him the other way.

Reason means following a decision that is best for the good of the whole in spite of the inconveniences to the pleasure of the self. Other paragraphs clearly state the same meaning:

> *"Sec 36* . . . the not having them subject to the rules and restraints of reason: *the difference lies not in having or not having appetites, but in the* ***power to govern, and deny ourselves in them****. He that is not used to submit his will to the reason of others when he is young, will scarce hearken to submit to his own reason when he is of an age to make use of it.* And what kind of a man such an one is like to prove, is easy to foresee." (emphasis added)

Locke insists that it is not the existence of the appetites but power to govern and deny the self that makes a man rational. It is our purpose to control and govern our desires, even to the point of denying them to follow the decision of reason. Locke foresees that those children who cannot follow the right reason of others when they are young would have difficulties following their own reason when they come to the age to use it. This would make them men who are governed by passions with no free choice. Certain children can be rational at a very early age, and parents are to encourage the use of reason by attempting to create a habit of rational thinking in their children.[1081] Habits for Locke are more important than rules. Reason for Locke can be acquired better with experience (or habit). Locke insists that instead of memorizing complicated prohibitions, parents should try to make it a habit in their children to think in a rational way, in denial of their own interests for the best interests of the whole:

[1078] For important support on the same see my analysis of Aristotle's human reason as practiced by habit p. 205.
[1079] Locke, (1693), *Education*. See entire ref. in bibliography.
[1080] Locke, (1693), *Education*, Para. 33.
[1081] See Yolton, (2004), 31-32.

> *§ 38. "*It seems *plain to me,* that *the principle of all virtue and excellency lies in* ***a power of denying ourselves the satisfaction of our own desires, where reason does not authorize them.*** *This power is to be got* ***and improved by custom, made easy and familiar by an early practice.*** If therefore I might be heard, I would advise, that, *contrary to the ordinary way, children should be used to submit their desires, and go without their longings, even from their very cradles. The first thing they should learn to know, should be, that they were not to have anything because it pleased them, but because it was thought fit for them."* (emphasis added)[1082]

Locke says again that the "principle of all virtue" is in the power to "deny" the "satisfaction" of our "own desires", when and if not authorized by reason. The key then is the authorization of reason, considering the surrounding individual circumstances. This power to control selfish passions can and should be improved by custom so as to make it easier to deal with from a very early age. Practice is much more efficient than complicated rules and prohibitions. Locke therefore advises that parents treat children differently than is done today. Instead of spoiling children and giving them all they desire when they cry, he recommends that parents make it a habit for them to be patient and not submit to their desires; and "go without their longings," even from the "cradle." Locke would recommend letting a baby cry to train his body and his mind to control bodily desires and avoid slavery to matter. This habit would make people less like animals, guided by desires, and more human, governed by reason and making decisions towards the common good.

Locke distinguishes between the desires of fancy that are to be eliminated and desires needed by nature that are to be satisfied. However, Locke says that even for the desires of nature, children are to learn not to take any pleasure in it "but be indifferent to all that nature has made so" and be patient, as much as possible. This would teach children "modesty, submission, and a power to forbear' and make them "stronger in body and mind" so as to obey reason:

> *§107. "*That which *parents should take care* of here, is to *distinguish between the wants of fancy, and those of nature;* which Horace has well taught them to do in this verse: *Queis humana sibi doleat natura negatis.* 172 Those are *truly natural wants, which reason alone, without some other help, is not able to fence against, nor keep from disturbing us*. The *pains of sickness and hurts, hunger, thirst,* and *cold, want of sleep* and *rest* or *relaxation of the part weary'd with labour, are what all men feel* and the best disposed minds cannot but be sensible of their uneasiness; and *therefore ought, by fit applications, to seek their removal, though not with impatience,* or over great haste, upon the first approaches of them, where delay does not threaten some irreparable harm. The pains that come from the necessities of nature, are monitors to us to beware of greater mischief's, which they are the forerunners of; and therefore they *must not be wholly neglected*, nor strained too far. *But yet the more children can be inured to hardships of this kind, by a wise care to make them stronger in body and mind, the better it will be for them.* I need not here give any caution to keep within the bounds of doing them good, and to take care, that what children are made to suffer, should neither break their spirits, nor injure their health, parents being but too apt of

[1082] Locke, (1693) continues, "If things suitable to their wants were supplied to them, so that they were never suffered to have what they once cried for, *they would learn to be content without it*, would never, with bawling and peevishness, contend for mastery, nor be half so uneasy to themselves and others as they are, because from the first beginning they are not thus handled. If they were never suffered to obtain their desire by the impatience they expressed for it, they would no more cry for another thing, than they do for the moon" (emphasis added, Locke, (1693), *Education*, Para. 38).

themselves to incline more than they should to the softer side... I think all things should be contrived, as much as could be, to their satisfaction, that they may find the ease and pleasure of doing well. *The best for children is that they should not place any pleasure in such things at all,* ***nor regulate their delight by their fancies, but be indifferent to all that nature has made so****. …Next, it* ***will teach to keep in, and so master their inclinations. By this means they will be brought to learn the art of stifling their desires, as soon as they rise up in them, when they are easiest to be subdued****. For giving vent, gives life and strength to our appetites; and he that has the confidence to turn his wishes into demands, will be but a little way from thinking he ought to obtain them.* This, I am sure, every one can more easily bear a denial from himself, than from any body else. *They should therefore* ***be accustomed betimes to consult, and make use of their reason, before they give allowance to their inclinations.*** This a great step towards the mastery of our desires, to give this stop to them, and shut them up in silence. This habit got by children, of staying the forwardness of their fancies, and deliberating whether it be fit or no, before they speak, will be of no small advantage to them in matters of greater consequence, in the future course of their lives. … *They should* ***be brought to deny their appetites; and their minds, as well as bodies,*** *be made vigorous, easy, and strong, by the custom of having their inclinations in subjection, and their bodies exercised with hardships:* But all this, without giving them any mark or apprehension of ill-will towards them. *The constant loss of what they craved or carved to themselves, should teach them modesty, submission, and a power to forbear:* But the rewarding their modesty, and silence, by giving them what they liked, should also assure them of the love of those who rigorously exacted this obedience." (emphasis added)

So children are to be trained from an early age to deny their selfish inclinations and desires if they are not in accordance with reason. This would teach them modesty and submission. They should always be encouraged to consult their reason when the inclination arises. Locke notes that children should "master their inclinations. By this means they will be brought to learn the art of stifling their desires, as soon as they rise up in them, when they are easiest to be subdued." Mastering desires of the self must be in accordance with reason: "They should therefore be accustomed betimes to consult, and make use of their reason, before they give allowance to their inclinations." Locke's words thus provide the best support; they unmistakably justify my argument regarding his special meaning of reason.[1083]

4.6.1.2.2 Support for Locke's meaning of happiness as a rational suspension of appetites[1084]

Essay Concerning Human Understanding

In Locke's *Essay Concerning Human Understanding*,[1085] the use of reason for the knowledge of the moral natural law is considered to be the rational "pursuit of happiness." The

[1083] Tully, (1980) supports this source and mentions that it is a source for Locke's, (1693), *Education*. He asserts that Locke notes that two things are to be taken from children as early as possible: the power and right to do as they desire. For Locke, they are the "two roots of almost all the injustice and contention, that so disturb Human Life….[T]hey [children] would have propriety and possession, pleasing themselves with the power which that seems to give, and the Right they thereby have, to dispose of them as they please." See Tully, (1980), 103, 207.

[1084] For my entire analysis of Locke's meaning of enjoyment as a rational pursuit and the suspension of appetites, see p. 138

For further important support on the same, see my analysis of Aristotle's meaning of pleasure as a state of the soul versus bodily pleasures p. 202.

[1085] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 50-60.

suspension of our own desires is specifically required for that purpose. Locke clearly calls for the suspension of desires, even those deriving from violent passions such as love and anger to consider the action using reason. He argues that one must try to suspend desires of self until after a due deliberation on the greatest good with a mind that is be unbiased by any selfish desires:

> Para 54. *"**Government of our passions the right improvement of liberty**. But if any extreme disturbance (as sometimes it happens) possesses our whole mind*, as when the pain of the rack, an impetuous uneasiness, *as of love, anger, or any other violent passion, running away with us, allows us not the liberty of thought, and we are not masters enough of our own minds to consider thoroughly and examine fairly*; God, who knows our frailty, pities our weakness, and requires of us no more than we are able to do, and sees what was and what was not in our power, will judge as a kind and merciful Father. But the ***forbearance of a too hasty compliance with our desires, the moderation and restraint of our passions*, so that our understandings may be free to examine, and reason unbiased give its judgment**." (emphasis added)[1086]

Locke also says that to reach true lasting felicity, we are to suspend desires and stop them from determining our actions and make a deliberate, mature decision as to the good or evil of it and choose the decision that promotes the "greatest good."

> Para 5*3. "Power to suspend. This is the hinge on which turns the liberty of intellectual beings, in their constant endeavours after, and a steady prosecution of true felicity,- That they can **suspend this prosecution in particular cases, till they have looked before them, and informed themselves whether that particular thing which is then proposed or desired lie in the way to their main end, and make a real part of that which is their greatest good.*** For, the inclination and tendency of their nature to happiness is an obligation and motive to them, to take care not to mistake or miss it; and so necessarily puts them upon caution, deliberation, and wariness, in the direction of their particular actions, which are the means to obtain it. ... *Whatever necessity determines to the pursuit of real bliss, the same necessity, with the same force, establishes **suspense, deliberation, and scrutiny of each successive desire, whether the satisfaction of it does not interfere with our true happiness, and mislead us from it**... That they **can suspend their desires, and stop them from determining their wills to any action, till they have duly and fairly examined the good and evil of it, as far forth as the weight of the thing requires**. This we are able to do; and when we have done it, we have done our duty, and all that is in our power; and indeed all that needs*. … upon a due and mature examination, is in our power; experience showing us, that in most cases, we are *able to suspend the present satisfaction of any desire.*"(emphasis added)[1087]

Locke again repeats that to achieve true and solid happiness, one must suspend satisfying the self but act for the greatest good in accordance with reason:

> Para 52. "The *necessity of pursuing true happiness the **foundation of liberty***. As therefore the highest perfection of intellectual nature lies in a careful and constant pursuit of true and solid happiness; … till we have duly examined whether it has a tendency to, or be inconsistent with, our real happiness: and therefore, ***till we are as much informed upon this inquiry as the weight of the matter, and the nature of the case demands, we are, by the necessity of preferring and pursuing true happiness as***

[1086] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 54.
[1087] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 53.

***our greatest good, obliged to suspend the satisfaction of our desires in particular cases.*"** (emphasis added)[1088]

To Locke, moral law discovered by reason sets necessary limits on our desires: "*Moral laws are set as* a curb and *restraint to these exorbitant desires*, which they cannot be but by rewards and punishments that will overbalance the satisfaction any one shall propose to himself in the breach of the law" (emphasis added).[1089]

> Para 69. ..."If a man sees what would do him good or harm, what would make him happy or miserable, without being able to move himself one step towards or from it, what is he the better for seeing? And he that is at liberty to ramble in perfect darkness, what is his liberty better than if he were driven up and down as a bubble by the force of the wind? The being acted by a blind impulse from without, or from within, is little odds. *The first, therefore, and great* ***use of liberty*** *is to hinder blind precipitancy;* ***the principal exercise of freedom is to stand still, open the eyes, look about, and take a view of the consequence of what we are going to do, as much as the weight of the matter requires***." (emphasis added)[1090]

> Para 48. "*The power to suspend the prosecution of any desire makes way for consideration*. There being in us a great many uneasinesses, always soliciting and ready to determine the will, it is natural, as I have said, that the greatest and most pressing should determine the will to the next action; and so it does for the most part, but not always. *For, the mind having in most cases, as is evident in* ***experience****, a power to suspend the execution and satisfaction of any of its desires; and so all, one after another; is at liberty to consider the objects of them, examine them on all sides, and weigh them with others.* ***In this lies the liberty man has; and from the not using of it right comes all that variety of mistakes, errors, and faults*** *which we run into in the conduct of our lives, and our endeavours after happiness; whilst we precipitate the determination of our wills, and engage too soon, before due examination.* To prevent this, we have a power to suspend the prosecution of this or that desire; as everyone daily may experiment in himself. This seems to me the source of all liberty; in this seems to consist that which is (as I think improperly) called free-will. *For,* ***during this suspension of any desire, before the will be determined to action, and the action (which follows that determination) done, we have opportunity to examine, view, and judge of the good or evil of what we are going to do; and when, upon due examination,*** **we have judged**, we have done our duty, all that we can, or ought to do, in pursuit of our happiness; and it is not a fault, but a perfection of our nature, to desire, will, and act according to the last result of a fair examination." (emphasis added)[1091]

> Para 57. "*Power to suspend volition explains responsibility for ill choice*. ***These things, duly weighed, will give us, as I think, a clear view into the state of human liberty***. ***Liberty****, it is plain, consists in a power to do, or not to do; to do, or forbear doing, as we will... a man may suspend the act of his choice from being determined for or against the thing proposed, till he has examined whether it be really of a nature, in itself and consequences,* to make him happy or not. For, when he has once chosen it, and thereby it is become a part of his happiness, it raises desire, and that proportionably gives him uneasiness; which determines his will, and sets him at work in pursuit of his choice on

[1088] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 52.
[1089] Locke, (1689), *Human understanding*, Bk. I, Ch. 3, Para. 13.
[1090] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 69.
[1091] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 48.

all occasions that offer. … by a too hasty choice of his own making, he has imposed on himself wrong measures of good and evil; which, however false and fallacious, have the same influence on all his future conduct, as if they were true and right. … *The eternal law and nature of things must not be altered to comply with his ill-ordered choice.* … He had a power to suspend his determination; it was given him, that he might examine, and take care of his own happiness, and look that he were not deceived." (emphasis added)[1092]

Para 51. ... "*If to break loose from the conduct of reason, and to want that restraint of examination and judgment which keeps us from choosing or doing the worse*, be liberty, true liberty, madmen and fools are the only freemen: but yet, I think, nobody would choose to be mad for the sake of such liberty, but he that is mad already. The constant desire of happiness, and the constraint it puts upon us to act for it, nobody, I think, accounts an abridgment of liberty, or at least an abridgment of liberty to be complained of. God Almighty himself is under the necessity of being happy; and the more any intelligent being is so, the nearer is its approach to infinite perfection and happiness. That, in this state of ignorance, we short-sighted creatures might not mistake true felicity, *we are endowed with a power to suspend any particular desire, and keep it from determining the will, and engaging us in action. This is standing still, where we are not sufficiently assured of the way: examination is consulting a guide.*" (emphasis added)[1093]

Para 47. "Due consideration raises desire. And thus, by a due consideration, and examining any good proposed, *it is in our power to raise our desires in a due proportion to the value of that good, whereby in its turn and place it may come to work upon the will, and be pursued*. For good, though appearing and allowed ever so great, yet till it has raised desires in our minds, and thereby made us uneasy in its want . . . . *The balancing, when there is any in the mind, being only, which desire shall be next satisfied, which uneasiness first removed*. Whereby it comes to pass that, as long as any uneasiness, any desire, remains in our mind, there is no room for good, barely as such, to come at the will, or at all to determine it." (emphasis added)[1094]

Para 49. "[The] very ***end of our freedom*** *being, that we may attain the good we choose.* And therefore, every man is put under a necessity, by his constitution as an *intelligent being, to be determined in willing by his own thought and judgment what is best for him to do*: else he would be under *the determination of some other than himself, which is want of liberty*." (emphasis added)[1095]

For Locke, thus, the "rational pursuit of happiness" asks for a suspension of self-desires until there is a full examination of good and evil using reason. A man is to consult his or her reason and its natural law limitations. Only a calculated act under the limitations of reason can lead to everlasting and genuine joy.

This is further supported by Aristotle (350 B.C.E.): "*[F]or man, therefore, the life according to reason is best and pleasantest, since reason more than anything else is man. This life*

[1092] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 57.
[1093] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 51.
[1094] Locke, (1689), *Human Understanding*, Bk. II, Ch. 21, Para. 47.
[1095] Locke, (1689), *Human Understanding*,Bk. II, Ch. 21, Para. 49. "If we look upon those *superior beings above us*, who enjoy *perfect happiness*, we shall have reason to judge that they are more steadily determined in their choice of good than we" (emphasis added). Locke, (1689), *Human understanding*, Bk. II, Ch. 21, Para. 50. See also Para. 67. Locke then says that higher beings than us enjoy perfect happiness that derives from their constant use of reason.

therefore is also the happiest" (emphasis added).[1096]

I end this section with another source of Locke clearly demonstrating his use of reason: a correspondence from John Shute, Lord Barriston: "*You alone have vindicated the Rights and Dignities of human nature, and have restored Liberty to Men's Consciences from the Tyranny of human and their own Passions.*"[1097] This also supports my argument for Locke's use of reason as being superior to being governed by passions. Locke is a valuable defender of human rights and correlating obligations. As such, he defends human dignity and encourages man to avoid enslavement under the "tyranny of human passions."

4.6.1.3 Confirmation by other natural law authors

Hong, an analyst of natural law history, confirms that the moral inference of reason that is to be found in humanity, in comparison to animals, is agreed upon among the greatest number of philosophers: "***If there is any truth approved by the greatest number of philosophers ever**, it may be that **what distinguishes man from other animals the most is the fact that man has the rational faculty,** whereas other animals don't*" (emphasis added).[1098] This moral inference of reason is not new to the study of natural law and is confirmed among influential natural law juridical-philosophers.

4.6.1.3.1 Plato

A similar idea of reason is found in Plato (423 BC–348 BC), another founding father of western philosophy and natural law who also claims that the soul comprises three basic components that animate humanity: reason, emotion, and appetite. Reason is of higher value and dignity as it seeks morality for the common good. Emotion searches for feelings such as selfish honour and feelings of anger. Appetite searches for all other selfish passions such as money. Both emotion and appetite are considered by Plato to be of the "lower passions." To him, the just human is to be governed by reason. This would guard one's emotions and bring appetites under control. Plato would have lower passions submit to the dictates of reason.[1099]

Plato's *Dialogue* and *The Myth of Protagoras*[1100] are relevant to this thesis. According to myth, two gods, Prometheus and Epimetheus, were instructed by the rest of the gods to create different living species on earth with the necessary characteristics for survival and harmony. Epimetheus was responsible for the actual work of creation while Prometheus was in charge of controlling it. Epimetheus divided between all the living species proportionally natural characteristics so that they all lived and reproduced harmoniously. When the time came to produce human beings, Epimetheus realized there were no more natural characteristics to provide. Without any other choice, Epimetheus created humanity as inferior to animals and weak. Prometheus, in controlling man, helped him by stealing from Ephaistos the principles of technique (fire and the arts) and from Athena the principles of science (the arts of the

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[1096] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. X, Ch. 7. See p. 202.
[1097] Emphasis added. Locke, (30 Nov. 1703), *Letter to Locke*, MS, c18, fo.101, Cited in Dunn, (1969), 246.
[1098] HONG, *Right reason for natural law* , 1 (find in bibliography under internet sites). See also Salter, (2001), 537-555, entire article.
[1099] Plato's, (380 BC), *Republic*, cited at Plato's Dialogue, (518 B-D), *The Republic*, at the end of Bk. II, III and Bk. IV.
[1100] Plato's Dialogue, (518 B-D), *The myth of Protagoras*, Cited in Agazzi ,(1998), 1-9.

intellect). Human beings used those characteristics to secure their supremacy over nature and animals. However, human beings were unable to live in harmony. They divided themselves into separate groups, killing one another. At this point, Zeus interfered and instructed Hermes to provide each human being the qualities of justice, modesty, and morality. Only then were humans capable of living in harmony.

Plato considers advancements in science and technology to be the source of human supremacy over nature and that which separates humans from other living species. In ancient Greece, man was already self-destructive, so technological advancement could have brought humanity to its end. According to Plato, moral responsibility, if used by each human individually, is the only remedy to this self-destruction. Plato, as one of the earliest western philosophers, saw moral guidance as the only solution to continue the species.

This is confirmed by Agazzi (1998), president of the International Academy of Philosophy of Science (Brussels):

> "*[T]he dangers implicit in the uncontrolled use of creative intelligence (be it theoretical or practical) were already perceived by ancient philosophers, and morality was considered to be the unique remedy for them. Nowadays, technology can be considered the most impressive expression of human creativity; yet it does not contain the necessary guidelines for its positive exercise, and ethics is again postulated as the proper field in which such guidelines must be investigated and found.*"[1101]

4.6.1.3.2 Aristotle

Aristotle (384–322 B.C.E), Plato's student, was one of the most important foundational thinkers of western philosophy and natural law. Heavily relied upon by Grotius, he calls man a rational animal, making rationality human nature's defining characteristic. For him, ultimate happiness is to be found in living a life in accordance with reason.[1102] The rational animal is to love its fellow humans because it can see beyond the immediate satisfaction of passions and its own selfish desires.[1103]

For Aristotle, each species has a mental nature that is appropriated to its specific physical nature.[1104] As such, all species have the capacity to find out what is needed for their preservation. Humans also have the capacity to discover natural law via the use of reason, which is appropriated to its nature. The use and practice of reason is to be found within each individual.[1105]

[1101] See Plato's Dialogue, (518 B-D), *The myth of Protagoras*, Taken from Agazzi, (1998), 1-9.
[1102] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 7, 8, 10-12.
[1103] Ibid.
[1104] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. V, Ch. 6–7; Bk. III, Ch. 16.
[1105] For a modern confirmation see Corbett, (2009), 229–250.

In Aristotle's (350 BC) *Nicomachean Ethics*, he explains that humanity has an irrational element that is shared with the animals and a rational element that is exclusively human. The most primitive irrational element is the vegetative faculty, in charge of nutrition and development. The appetitive faculty is in charge of emotions and desires. To Aristotle, those are both rational and irrational as even animals can also experience passions and desires. To Aristotle, humans have an additional ability over the vegetative faculty for nutrition and the appetitive faculty for emotions and desires. Humans have the extra rational ability to control emotions and desires with the guidance of reason; they can make a choice of action that is best for the good of the whole.[1106] The human capacity to guide and restrain their passions and desires is named for Aristotle; it is a moral virtue. But the purely rational part of the soul in charge of the ability to reason and formulate scientific principles is an intellectual virtue:

> *"[T]hat one element in the soul is irrational and one has a rational principle …* Of the irrational element one division seems to be widely distributed, and *vegetative in its nature, I mean that which causes nutrition and growth;* for it is this kind of power of the soul that one must assign to all nurslings and to embryos, and *this same power to fullgrown creatures;* this is more reasonable than to assign some different power to them. *Now the excellence of this seems to be common to all species and not specifically human; for this part or faculty seems to function most in sleep ….*"[1107]

Aristotle then clearly divides the soul into irrational and rational principles. The irrational part is responsible for nutrition and growth—the vegetative nature. This is common to all species. It is a faculty that functions in sleep.

> "There seems to be also *another irrational element in the soul—one which in a sense, however, shares in a rational principle.* For we praise the rational principle of the continent man and of the incontinent, and the part of their soul that has such a principle, since it urges them aright and towards the best objects; but *there is found in them also another element naturally opposed to the rational principle, which fights against and resists that principle.* For exactly as paralysed limbs when we intend to move them to the right turn on the contrary to the left, so is it with the soul; *the impulses of incontinent people move in contrary directions. But while in the body we see that which moves astray, in the soul we do not. No doubt, however, we must none the less suppose that in the soul too there is something contrary to the rational principle, resisting and opposing* it. …

[1106] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 13; Bk. II, Ch. 5.
[1107] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 13, emphasis added.

> *Therefore the irrational element also appears to be two-fold. For the vegetative element in no way shares in a rational principle, but the appetitive and in general the desiring element in a sense shares in it, in so far as it listens to and obeys it; ... the irrational element is in some sense persuaded by a rational principle …"* (emphasis added)[1108]

Here, Aristotle explains that there is another irrational element of the soul that shares with the rational. It is usually opposed to and "fights against" the rational principle. This element is the "appetite" or "desire" that represents both the irrational and the rational principles.[1109] Because his moral philosophy is similar to Locke's use of reason, I hereby detail his ideas.

4.6.1.3.2.1 Element of choice guided by reason

Aristotle says that both children and animals share the need for the satisfaction of their appetites as voluntary actions done at the "spur of the moment." However, they do not share the element of choice. Choice cannot be found within irrational creatures like animals. Aristotle then defines and "incontinent" man as one who acts by the pure government of the appetites without having the element of choice. In comparison, he demonstrates that the continent man acts with a choice guided by reason:

> "Choice, then, seems to be voluntary, but not the same thing as the voluntary; the latter extends more widely. *For both children and the lower animals share in voluntary action, but not in choice, and acts done on the spur of the moment we describe as voluntary, but not as chosen.*
>
> Those who say it is appetite or anger or wish or a kind of opinion do not seem to be right. *For choice is not common to irrational creatures as well, but appetite and anger are. Again, the incontinent man acts with appetite, but not with choice; while the continent man on the contrary acts with choice, but not with appetite. Again, appetite is contrary to choice, but not appetite to appetite. Again, appetite relates to the pleasant and the painful, choice neither to the painful nor to the pleasant.* Still less is it anger; for acts due to anger are thought to be less than any others objects of choice." (emphasis added)[1110]

We are bound thus to follow reason in making choices. Letting our passions govern us can only lead us to incontinence or slavery to passions, likes animals.

In Aristotle, one learns that only the guidance of reason can lead to profitable knowledge.

[1108] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 13.

[1109] See also Aristotle, (350 BC), *Nicomachean Ethics*, Bk. II, Ch. 5. "Next we must consider what virtue is. *Since things that are found in the soul are of three kinds -- passions, faculties, states of character -- virtue must be one of these. By passions I mean appetite, anger, fear, confidence, envy, joy, friendly feeling, hatred, longing, emulation, pity, and in general the feelings that are accompanied by pleasure or pain; by faculties the things in virtue of which we are said to be capable of feeling these, e.g. of becoming angry or being pained or feeling pity; by states of character the things in virtue of which we stand well or badly with reference to the passions, e.g.* with reference to anger we stand badly if we feel it violently or too weakly, and well if we feel it moderately; and similarly with reference to the other passions . . . .

Again, we feel anger and fear without choice, but the virtues are modes of choice or involve choice. Further, in respect of the passions we are said to be moved, but in respect of the virtues and the vices we are said not to be moved but to be disposed in a particular way" (emphasis added).

Aristotle thus explains that within the soul there are passions (comprising appetites, anger, fear, confidence, envy, joy, and pity—all feelings of pain or pleasure), faculties (which allow us to feel the pain or pleasure), and states of character (which allow us to feel bad or good as to the passions).

[1110] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. III, Ch. 2.

Everything else is the government of passions and desires shared with the animal kingdom. This incontinent knowledge is not beneficial. A young man that is inexperienced tends to follow passions, so his study will be unprofitable because his purpose is not knowledge but action. Knowledge can only be of great benefit to those who "*desire and act in accordance with a rational principle*."

> "*Now each man judges well the things he knows, and of these he is a good judge.* And so the man who has been educated in a subject is a good judge of that subject, and the man who has received an all-round education is a good judge in general. Hence *a young man* is not a proper hearer of lectures on political science; for he is *inexperienced* in the actions that occur in life, but its discussions start from these and are about these; and, further, *since he tends to follow his passions, his study will be vain and unprofitable, because the end aimed at is not knowledge but action.* And it makes no difference whether he is young in years or youthful in character; the *defect does not depend on time, but on his living, and pursuing each successive object, as passion directs. For to such persons, as to the incontinent, knowledge brings no profit; but to those who desire and act in accordance with a rational principle knowledge about such matters will be of great benefit*." (emphasis added)[1111]

Aristotle further confirms that most men are of the most "vulgar type" who prefer a life of corporal enjoyments and who find happiness with immediate satisfaction of pleasures. The "*mass of mankind are evidently quite slavish in their taste, preferring a life suitable to beasts*." He considers that even people of '*superior refinement*' identify happiness with honour and possessions. This is not what humans should seek but is a means to an end:

> "Let us, however, resume our discussion from the point at which we digressed. *To judge from the lives that men lead, most men, and men of the most vulgar type, seem (not without some ground) to identify the good, or happiness, with pleasure; which is the reason why they love the life of enjoyment.* For there are, we may say, three prominent types of life—that just mentioned, the political, and thirdly the contemplative life. *Now the mass of mankind are evidently quite slavish in their tastes, preferring a life suitable to beasts, but they get some ground for their view from the fact that many of those in high places* share the tastes of Sardanapallus. A consideration of the prominent types of life shows that *people of superior refinement and of active disposition identify happiness with honour;* for this is, roughly speaking, the end of the political life. But it seems too superficial to be what we are looking for, since it is thought to depend on those who bestow honour rather than on him who receives it, *but the good we divine to be something proper to a man and not easily taken from him. Further, men seem to pursue honour in order that they may be assured of their goodness; at least it is by men of practical wisdom that they seek to be honoured, and among those who know them, and on the ground of their virtue* ….
>
> The life of money-making is one undertaken under compulsion, and *wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else*. And so one might rather take the aforenamed objects to be ends; for they are loved for themselves. But it is evident that not even these are ends; yet many arguments have been thrown away in support of them…." (emphasis added)[1112]

Aristotle explains that the incontinent man recognises this on a deeper level and knows that

[1111] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 3.
[1112] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 5.

what he is doing is bad but still engages in it due to weakness and the inability to rise above his passions. The continent man recognises his appetites yet chooses not give in to them due to rational guidance. For Aristotle, some men are wise but still incontinent for they decide to give in to their passions and bodily needs in. But a man of practical wisdom who uses and follows reason cannot be incontinent:

> "And (2) the *incontinent man, knowing that what he does is bad, does it as a result of passion, while the continent man, knowing that his appetites are bad, refuses on account of his rational principle to follow them*…. (4) The man of practical wisdom, they sometimes say, cannot be incontinent, while sometimes they say that some who are practically wise and clever are incontinent." (emphasis added)[1113]

Aristotle adds that incontinent people who follow their immediate bodily passions without the guidance of their reason are like men who are "asleep," "mad," or "drunk." Intellectual knowledge proves nothing if reason is not followed, for man could have much knowledge yet still follow passions out of weakness:

> "It is plain, then, that *incontinent people must be said to be in a similar condition to men asleep, mad, or drunk. The fact that men use the language that flows from knowledge proves nothing; for even men under the influence of these passions utter scientific proofs and verses of Empedocles* . . . . the appetite is contrary, not the opinion –to the right rule…"(emphasis added)[1114]

Aristotle continues his explanation of choice as follows. Incontinence is contrary to the choice given by reason. As such, an incontinent man acts not on choice but to satisfy excessive bodily pleasures that go against the right rule. It is reason that teaches about right opinion and creates a temperate man:

> "Evidently, then, incontinence is not vice (though perhaps it is so in a qualified sense); for *incontinence is contrary to choice while vice is in accordance with choice*; not but what they are similar in respect of the actions they lead to; as in the saying of Demodocus about the Milesians, 'the Milesians are not without sense, but they do the things that senseless people do', so too incontinent people are not criminal, but they will do criminal acts.
>
> Now, *since the incontinent man is apt to pursue, not on conviction, bodily pleasures that are excessive and contrary to the right rule,* while the self-indulgent man is convinced because he is the sort of man to pursue them, it is on the contrary the former that is easily persuaded to change his mind, while the latter is not. For virtue and vice respectively preserve and destroy the first principle, and in actions the final cause is the first principle, as the hypotheses are in mathematics; neither in that case is it argument that teaches the first principles, nor is it so here—*virtue either natural or produced by habituation is what teaches right opinion about the first principle.* Such a man as this, then, is temperate; his contrary is the self-indulgent." (emphasis added)[1115]

This is in the spirit of Locke's use of reason (and also with Grotius and Pufendorf). They all see reason as that unique human virtue that provides the choice to rise above passions of the self and make moral decisions that will benefit the whole.

[1113] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. VII, Ch. 1.
[1114] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. VII, Ch. 3.
[1115] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. VII, Ch. 8.

4.6.1.3.2.2 Aristotle's pleasure versus bodily pleasures[1116]

Aristotle says that a pleasure is not what most men think—it is not a corporal feeling but a "state of soul." This is why for most men, pleasures are in conflict with one another. He explains that the "noble" lovers find pleasure in that which is "by nature pleasant," such as virtuous actions. Those noble men do not need to search for "exterior pleasures" because they can find pleasure in virtuous acts. Following reason and living a life in accordance with it is in itself pleasant for those noble men. As such, they find no need for any other corporal exterior pleasures:

> "Their life is also in itself pleasant. For *pleasure is a state of soul,* and to each man that which he is said to be a lover of is pleasant; e.g. not only is a horse pleasant to the lover of horses, and a spectacle to the lover of sights, but also in the same way *just acts are pleasant to the lover of justice and in general virtuous acts to the lover of virtue*. Now *for most men their pleasures are in conflict with one another because these are not by nature pleasant, but the lovers of what is noble find pleasant the things that are by nature pleasant; and virtuous actions are such, so that these are pleasant for such men as well as in their own nature. Their life, therefore, has no further need of pleasure as a sort of adventitious charm, but has its pleasure in itself….Most noble is that which is justest, and best is health; But pleasantest is it to win what we love*." (emphasis added)[1117]

Aristotle then makes it clear that certain pleasures are common to animals, and because man has grown up with these pleasures since infancy, it is difficult to subdue these passions. It is harder to fight with pleasures based on passion than anger:

> *"[P]leasure; for this is common to the animals,* and also it accompanies all objects of choice; for even the noble and the advantageous appear pleasant.
>
> *Again, it has grown up with us all from our infancy; this is why it is difficult to rub off this passion, engrained as it is in our life.* And we measure even our actions, some of us more and others less, by the rule of pleasure and pain. For this reason, then, our whole inquiry must be about these; for to feel delight and pain rightly or wrongly has no small effect on our actions.
>
> *Again, it is harder to fight with pleasure than with anger,* to use Heraclitus' phrase', but both art and virtue are always concerned with what is harder; for even the good is better when it is harder. Therefore for this reason also the whole concern both of virtue and of political science is with pleasures and pains; for the man who uses these well will be good, he who uses them badly bad." (emphasis added)[1118]

Aristotle continues and says that the immediate satisfaction of pleasure might lead to bad choices because what appears pleasant is not necessarily what is good for the individual: "*In most things the error seems to be due to pleasure; for it appears a good when it is not. We therefore choose the pleasant as a good, and avoid pain as an evil.*"[1119]

Aristotle further explains that seeking the common good is harder, so it is rare and noble. He

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[1116] The following also supports Locke's meaning of happiness as a rational suspension of appetites, see p.138. See also on p. 193.
[1117] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 8.
[1118] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. II, Ch. 3.
[1119] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. III, Ch. 4.

argues that to be in a better position to make objective choices, one has to "dismiss pleasure" until a decision is made because this immediate pleasure pushes to make bad decisions in favour of what is bodily pleasant:

> "*That moral virtue is a mean, then, and in what sense it is so, and that it is a mean between two vices, the one involving excess, the other deficiency*, and that it is such because its character is *to aim at what is intermediate in passions and in actions*, has been sufficiently stated. Hence also it is *no easy task to be good*. For in everything it is no easy task to find the middle, e.g. … *give or spend money; but to do this to the right person, to the right extent, at the right time, with the right motive, and in the right way, that is not for every one, nor is it easy; wherefore goodness is both rare and laudable and noble . . . .*"
>
> Now in everything the pleasant or *pleasure is most to be guarded against; for we do not judge it impartially.* We ought, then, to feel towards pleasure as the elders of the people felt towards Helen, and in all circumstances repeat their saying; *for if we dismiss pleasure thus we are less likely to go astray. It is by doing this, then, (to sum the matter up) that we shall best be able to hit the mean.*" (emphasis added)[1120]

Aristotle provides a detailed explanation of how amusement is a relaxation or a rest from work. A rest is needed only for the sake of a better work environment. One cannot work continuously without breaks; amusement and relaxation are needed from time to time. However, those who are lovers of amusements search for excessive amusement. As such, they are not self-indulgent but actually weak or soft, for they really search for more relaxation than work: "*The lover of amusement, too, is thought to be self-indulgent, but is really soft. For amusement is a relaxation, since it is a rest from work; and the lover of amusement is one of the people who go to excess in this*...."[1121]

Those who make finding amusement a purpose in life can only be "silly" and "childish"; long-term happiness is not to be found in amusements but is a "state of soul."[1122]

> "*Happiness, therefore, does not lie in amusement;* it would, indeed, be strange if the end were amusement, and one were to take trouble and suffer hardship all one's life in order to amuse oneself. *For, in a word, everything that we choose we choose for the sake of something else—except happiness, which is an end. Now to exert oneself and work for the sake of amusement seems silly and utterly childish. But to amuse oneself in order that one may exert oneself, as Anacharsis puts it, seems right; for amusement is a sort of relaxation, and we need relaxation because we cannot work continuously. Relaxation, then, is not an end; for it is taken for the sake of activity*" (emphasis added).[1123]

Aristotle clearly states that for man to find long-lasting happiness in life, he must follow the guidance of reason because it is a part of the dignity of human nature: "[T]hat which is proper to each thing is by nature best and most pleasant for each thing; *for man, therefore, the life according to reason is best and pleasantest, since reason more than anything else is man. This life therefore is also the happiest*" (emphasis added).[1124] Moreover, "[P]rinciples of practical wisdom are in accordance with the moral virtues and rightness in morals is in

[1120] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. II, Ch. 9.
[1121] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. VII, Ch. 7.
[1122] See also Aristotle, (350 BC), *Nicomachean Ethics*, Bk. I, Ch. 8.
[1123] Aristotle, (350 BC), *Nicomachean Ethics*, Bk. X, Ch. 6.
[1124] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. X, Ch. 7.

accordance with practical wisdom . . . . *Now he who exercises his reason and cultivates it seems to be both in the best state of mind and most dear to the gods*."[1125] The idea that of true happiness deriving from a life guided by reason can be found within Locke's *Essay Concerning Human Understanding.*[1126]

4.6.1.3.2.3 Human reason divided to intellectual and moral virtue practiced by habit[1127]

Aristotle notes that human virtue or reason can be divided to an intellectual and moral virtue. The intellectual comes with birth and demands experience and education for its cultivation. The moral virtue comes from habit. Aristotle notes that the word "ethike" is a slight variation on "ethos" (habit), so it is clear that no moral virtue is innate because nothing that exists already can create a habit that is contrary to it. All men have the capacity to adapt the moral virtue, but it must be practiced via habit.[1128]

> "*VIRTUE, then, being of two kinds, intellectual and moral, intellectual virtue in the main owes both its birth and its growth to teaching* (for which reason it requires experience and time), while *moral virtue comes about as a result of habit, whence also its name (ethike) is one that is formed by a slight variation from the word ethos (habit). From this it is also plain that none of the moral virtues arises in us by nature; for nothing that exists by nature can form a habit contrary to its nature.* For instance the stone which by nature moves downwards cannot be habituated to move upwards, not even if one tries to train it by throwing it up ten thousand times; nor can fire be habituated to move downwards, nor can anything else that by nature behaves in one way be trained to behave in another. Neither by nature, then, nor contrary to nature do the virtues arise in us; *rather we are adapted by nature to receive them, and are made perfect by habit.*"[1129]

Aristotle then says that a virtue is a state of character comprising the element of choice, or the "mean," which is "relative" to each, as determined by the rational principle. A rational man who follows and put in practice the guidance of reason is a man of practical wisdom.

> "*Virtue, then, is a state of character concerned with choice, lying in a mean, i.e. the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it. Now it is a mean between two vices, that which depends on excess and that which depends on defect; and again it is a mean because the vices respectively fall short of or exceed what is right in both passions and actions, while virtue both finds and chooses that which is intermediate*. Hence in respect of its substance and the definition which states its essence virtue is a mean, with regard to what is best and right an extreme." (emphasis added)[1130]

Practical wisdom helps man become good, just, and noble. It points him in the right direction.

> "*Practical wisdom is the quality of mind concerned with things just and noble and good for man… practical wisdom* not for the sake of knowing moral truths but for the sake of *becoming good…* Again, the work of man *is achieved only in accordance with practical*

[1125] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. X, Ch. 8.
[1126] See p. 193.
[1127] The following also supports that Locke's reason is acquired with experience (or habit), see p. 191.
[1128] Locke agrees in his text on education. See p. 191.
[1129] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. II, Ch. 1, emphasis added.
[1130] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. II, Ch. 6.

> *wisdom as well as with moral virtue*; for *virtue makes us aim at the right mark, and practical wisdom makes us take the right means*." (emphasis added)[1131]

Aristotle notes, "It is clear, then, from what has been said, that it is not possible to be good in the strict sense without practical wisdom, nor practically wise without moral virtue."[1132]

Practical wisdom expressed by the guidance of reason and the habit of moral virtue help one become truly good and wise. Locke's theory on reason is well-founded in its reliance on a founding father of natural law. Aristotle actually dedicated his *Nicomachean Ethics* to the development and analysis of those moral ideas.

The appetites and pleasures of the body can only lead us away from the right rule of practical reason; they must be suspended to ensure we judge objectively. Following passions and desires shows weakness deriving from the inability to rise above the preference for amusements and pleasures of the body—which cannot bring lasting happiness of the soul. Reason represents a moral choice apart from selfish bodily pleasures. Moral virtue, to Aristotle, cannot be innate because it is in conflict with bodily desires and the desire for immediate satisfaction. We are all born with the capacity to develop it, but it can only be mastered by the habitual use of reason—the same reason in Locke's essay on education.[1133]

A modern confirmation of Aristotle's theories is Irwin (1975):

> "Aristotle defines virtue as a state concerned with decision (1106b36)... The incontinent man does not act on his decision, but on deliberation, to satisfy his appetite; but the desire that initiates his deliberation is not the rational wish required for a real decision, in Aristotle's restricted use of 'decision' (cf. 1142b17-20). … A virtuous man must decide on virtuous activities for themselves (1105a28-33, 1144al3-20); and the desire that initiates this decision cannot simply be a desire to act virtuously because he enjoys it."[1134]

Irwin further confirms that for Aristotle, one must not only supress appetites and make decisions in accordance with practical use but also make a habit of enjoying actions that are in accordance with reason. If enjoyment is attached to appetites, it is difficult to avoid incontinence.[1135]

The interpretation of reason as rising above passions is thus connected to Locke, Grotius, Pufendorf, Aristotle, and also Cicero.[1136] It is further widespread among many others natural law authors such as Plato, Pythagoras, Heraclitus, Socrates, Xenophon, and Aquinas, among

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[1131] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. VI, Ch. 12.
[1132] Aristotle, (350 BC), *Nicommachean Ethics*, Bk. VI, Ch. 13.
[1133] See p. 191 and following.
[1134] Irwin, (1975), 567-578.
[1135] Irwin, (1975), 567-578.
[1136] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1: "*Cicero* in the third book of his Bounds of Good and Evil, and in other parts of his works, proves with great erudition from the writings of the Stoics, that *there are certain first principles of nature, called by the Greeks the first natural impressions, which are succeeded by other principles of obligation superior even to the first impressions themselves*. .. But from the knowledge of these principles, a notion arises of their being agreeable to *reason, that part of a man, which is superior to the body. Now that agreement with reason, which is the basis of propriety, should have more weight than the impulse of appetite; because the principles of nature recommend right reason.*" (emphasis added).

many others. It is not my intention here to discuss them all as they all use reason in a similar way. For the purpose of my argument, I will provide brief examples of this same use of reason in Plato, demonstrated above, and Aquinas.

4.6.1.3.3 Aquinas

St. Thomas Aquinas (1225–1274) is another prominent figure of natural law. For Aquinas it is an obligation to act by the "*ordinance of reason for the common good, promulgated by him who has the care of the community*."[1137] It is the human capacity to reason and make free choices that separates humans from animals. Humans have free will to choose whether to follow the voice of reason. With this freedom of choice comes the responsibility to obey natural law limitations.[1138]

Locke speaks of reason in a similar manner—as a tool each human possesses that allows him to suspend immediate pleasures until he judges and makes a moral choice for the common good. These founders confirm my argument that Locke's text reveals a use of reason that was already well established among natural law philosophers of the past and present.

4.6.1.3.4 Corroboration from the utilitarian movement

It is ironic that I now use the tenets of a movement that clearly opposes natural law as a final support for Locke's specific use of reason as rising above self-inclination and embracing duty. The juridical-philosophical sources of utilitarianism often argue that natural law is "nonsense upon stilts"[1139] while unknowingly validating it by promoting their own version of reason. The human capacity to reason, a human deductive tool to decide between right and wrong, was recognised and used by utilitarian founders; today, some of those who follow this philosophy object to the test of reason and demand equal rights for animals and humans based on the capacity to feel pain.

Bentham, the founder of utilitarianism, claims that right law is in accordance with reason: "The *right law* will produce happiness, and the *right law is the one in accordance with reason.*"[1140] Humans have more supreme value, and reason is a deductive tool used by humans to calculate the greatest happiness for the greatest number of people.[1141] In his *Remarks on Bentham's Philosophy* (1833), Mill, the most well-known utilitarian philosopher and successor of Bentham, cites Bentham's *The Book of Fallacies* and states that "*Fundamental to the nature and activity of individuals, then, is their own well-being, and reason—as a natural capability of the person*—is considered to be subservient to this end…. Bentham also states; "…the individual human being is conceived as the source of

[1137] S.L.R., (1957), 481. Citing Aquinas, (1265-1274), *Summa Theologica*, Part I-II, Question 90, Art. 4. See also Part II, Question 90, Art. 1 and; Part II, Question 91, Art. 2 on 1.
[1138] S.L.R., (1957), 481. Citing Aquinas, (1265-1274), *Summa Theologica*, Part I-II, Question 90, Art. 4. See also Part II, Question 90, Art. 1 and; Part II, Question 91, Art. 2 on 1. There are many other examples of natural law authors connecting reason and morality, some of whom are mentioned herein. For Suarez, (1612), natural law is that "which is inherent in the human mind for *distinguishing the virtuous and the shameful*." See p. 19. See also Aristotle, (350 BC), *Nicommachean Ethics*, Bk. VI, Ch. 12.
[1139] See p. 209.
[1140] Mill, (1833), 392-393, citing Bentham, (1843), *Anarchical Fallacies*, Vol. 2.
[1141] Ibid.

values and *as himself the supreme value*" (emphasis added).[1142] Bentham, however, unlike Locke and natural law philosophers, treats all forms of happiness (physical and intellectual) as equal.[1143]

4.6.1.3.4.1 Natural law: "nonsense upon stilts"

Bentham indeed calls natural law "nonsense upon stilts."[1144] But the utilitarian movement misuses this remark in its campaign against natural law. Bentham was arguing against conferring natural rights upon humans without any correlating limitations. He insists that "rights" are created by law, and to be meaningful, others cannot interfere with those rights. If there were a "right" without any kind of restraint, anarchy would result.[1145]

I argue in this thesis that rights with their correlating obligations form the crux of Locke's theory of natural law and its limitations. Bentham could thus be a potential source of support for my arguments because he sees rights without obligations as leading to anarchy. However, there is certain incoherence in utlitarians using Bentham as a source, for the argument above seems incongruous with their defence of equal rights for animals, which do not even have the capacity to reflect on their inclinations and perform corresponding obligations.

But Bentham's own source, Rousseau, also sees reason as an important human tool. He is well aware of the difference between humans and animals, and his use of reason is quite similar to the one I argue is evident in Locke (duty above self-interests). Rousseau (1754) writes,

> "Then only, *when the voice of duty takes the place of physical impulses and right of appetite*, does man, who so far had considered only himself, find that he is forced to act on different principles, and to *consult his reason before listening to his inclinations* . . . . [F]or it is clear that, *[animals] being destitute of intelligence and liberty, they cannot recognize that law*; as they partake, however, in some measure of our nature, in consequence of the sensibility with which they are endowed, … *mankind is subjected to a kind of obligation even toward the brutes* . . . . [Heavily cited by the Utilitarian movement,] [i]t appears, in fact, that if I am bound to do no injury to my fellow-creatures, this is less because they are rational than because they are sentient beings: and this quality, being common both to men and beasts, ought to entitle the latter at least to the privilege of not being wantonly ill-treated by the former."[1146]

Utilitarians use this text to demonstrate that their juridical-philosophical roots support the abolition of the test of reason based on animals. Peter Singer, a modern utilitarian philosopher whose texts have been used to draft new law expanding rights for animals with no

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[1142] Ibid., citing Bentham, (1843), *Anarchical Fallacies*, Vol. 2.

[1143] John Stuart Mill (1806 –1873) also holds that one must always act so as to produce the greatest happiness for the greatest number of people, but *within reason*. Mill ,(1833), (in comparison to Bentham, who treats all forms of happiness as equal), argues that moral and intellectual pleasures are superior to physical forms of pleasure. Mill also differentiates between happiness and contentment, saying that the former is better: "[i]t *is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question*." See Mill ,(1833), 392-393.

[1144] Bentham's, (1843), statement regarding the law of nature refers to his criticism of the declarations of rights issued in France during the revolution, drafted between 1791 and 1795 (published in 1816). Bentham, (1843), *Anarchical Fallacies*, Vol. 2. Cited in Mill, (1833), 392-393.

[1145] Ibid., emphasis added.

[1146] Rousseau, (1754), Preface, Para. 12, emphasis added.

corresponding obligations, argues for the removal of the test of reason when comparing animals and men and having human rights cover animals. However, if one reads Rousseau carefully, it is clear that the "lessening" of the rationality test for animals aims primarily to ensure humans avoid ill-treatment of animals based on their responsible role as rational creatures that must use reason instead of giving in to passions.

For Rousseau, one must consult reason as the "voice of duty" before listening to "impulses and [the] right of appetite." This smacks of the meaning of reason used by Grotius, Pufendorf, Aristotle, Plato, Aquinas, many other natural law founders, and—I argue—Locke. Utilitarian sources seem thus to agree that reason is a uniquely human moral capacity to rise above the appetites of the self and become responsible to others, including brutes. Many undisputed sources confirm that Locke's use of reason is moral in nature and seeks to promote the common good, rising above passions and conveniences of the self.

4.6.1.3.4.2 Against the utilitarian philosophy in general

Locke's own words oppose the utilitarian philosophy of supporting the full power to the state: "*For he that thinks absolute power purifies men's blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary*" (Locke II, 92). Locke demonstrates that such state power has been problematic throughout history. To prevent abuse of such power, the government's role should be only to provide better protection of natural law principles (Locke II, 111, 131, 134, 135, 159, 171).[1147]

Donald (2011) defends natural law and natural rights over utilitarian objections:

> "The problem of 'how do we know natural law' is no different from the other problems of perception. The arguments used by those that seek to prove that we cannot know natural law, therefore natural law does not exist, are precisely the same as the arguments that we cannot know anything, therefore nothing exists, and many notable philosophers, such as Berkeley and Bertrand Russell, who started out arguing that natural law does not exist ended up concluding exactly that—that nothing exists."[1148]

It is often argued that humans are to stick to the same moral law under natural law that has existed since the beginning of human civilization because moral pluralism provides no foundation for determining which of multiple principles to follow in a given circumstance. It further has the risk of weakening humans' moral obligation to choose that which is more convenient: "With a variety of theories at our disposal, each indicating different, inconsistent, or contradictory courses of action . . . we may be tempted to espouse the one that seems most convenient or self-serving in the circumstances."[1149]

[1147] Against Utlitatians see p.12, p. 26 and; footnotes 425 and 135. See also indirect ref from Locke under p. 100 & p. 105. Examples from Locke see p. 105-110. See also p. 7. Locke has inspired the most important revolutions for the individuals' rights against the abuse of the state.

[1148] Donald, (2011), 3, Para. 13 (find in bibliography under internet sites).

[1149] Callicott, (1999), 143-169. Moral Monism in Environmental Ethics is defended in Callicott, (1999), 171-183.

5 Locke's natural law limits on property

5.1 In general

Locke's natural law limits on property, based on reason, are timelessly valid and relevant. These limits are largely detailed and emphasised for their important purpose of guaranteeing the most fundamental principle of natural law: no harm to others.[1150] I argue that these natural law limitations are integral to Locke's theory of property as he used them to explain how appropriation from the common is possible without the need for general consent and without causing any injury to others.

To Locke, property is limited in nature. It is given in common: "earth to the children of men; given it to mankind in common" (Locke II, 25, emphasis added).[1151] As such, it must be preserved for benefit of the whole creation. Each individual right[1152] to property accumulation is protected under natural law: "equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man" (Locke II, 54). This comes from Locke's labour theory.[1153] Through the accumulation of property, the shares of other commoners may be harmed.

Tully (1980) explains that to Locke, taking more property than needed might be harmful to others: "Resources necessary for an adequate moral life for everyone are finite":

> "[T]he inheritance of the whole of mankind is always one and the same, and it does not grow in proportion to the number of people born. Nature has provided a certain profusion of goods for the use and convenience of men, and the things provided have been bestowed in a definite way and in a predetermined quantity; they have not been fortuitously produced nor are they increasing in proportion with what men need or covet."

This is why the accumulation of one imposes the injury of another: "[W]hen any man snatches for himself as much as he can, he takes away from another's heap the amount he adds to his own, and it is impossible to for anyone grow rich at the expense of someone else."[1154]

Locke's natural law limits control self-serving actions and protect the share of the whole by forcing man to respect the rights of others who have an equal share in self-preservation. As a result, Locke's property law will always be valid as it avoids harm to others through its natural law limits while it balances the needs of the self and the equal rights of preservation others. As such, to Locke, the natural law limitations are obligatory and of the highest importance so that no one is harmed by the appropriation. Simmons (1992) confirms that the purpose of natural law limitations is to ensure no one is harmed by the appropriation.[1155]

To Locke, the natural law limits guarantee that property rights work for the best long-term preservation of the whole. Locke needs the natural law limitations to validate and guarantee

[1150] See p. 99 and p. 123; see also p. 110.
[1151] See p. 131.
[1152] See p. 121.
[1153] See p. 79. See also the chapter on labour starting from p. 142.
[1154] Tully, (1980), 211.
[1155] Simmons, (1992), 292.

his property theory. Without such limitations, others could be harmed by the excessive accumulation of property. Unlimited accumulation is bound to create conflicts that inevitably harm the natural community. So it is only with the help of natural law limitations that Locke's theory of property remains valid.

The traditional line of interpretation, following Macpherson (1951), concludes that "Locke's astonishing achievement was to base the property right on natural right, and then *to remove all the natural law limitations from the property right*" (emphasis added).[1156] But it is incorrect to read Locke as the defender of the selfish desire for limitless accumulation of property. I demonstrate instead the purpose of Locke's theory of property is to limit the needs of self for the preservation of the whole.[1157]

I have already demonstrated that to Locke, natural law is eternally valid and superior to the positive law of government and is to be regulated and interpreted accordingly[1158]: The "law of nature stands as an eternal rule to all men" (Locke II, 135). For the purpose of this central argument regarding the validity of these natural law limits, it is important to be reminded that to Locke, natural law limitations prevail over any human governmental law: "the municipal laws of countries, which are only so far right, as they are *founded on the law of nature, by which they are to be regulated and interpreted*" (Locke II, 12, emphasis added).

Locke mentions that positive law is to be regulated and interpreted in accordance with natural law and that natural obligations or natural law limitations prevail over positive law and its limits: "[A]nd the *ties of natural obligations, are not bounded by the positive limits* of kingdoms and commonwealths" (Locke II, 118, emphasis added).

Natural law and its obligations did not disappear with the creation of societies but instead became even more important: "The *obligations of the law of nature cease not in society, but only in many cases are drawn closer*" (Locke II, 135, emphasis added). Natural law is always valid: "Thus the *law of nature stands as an eternal rule to all men, legislators as well as others*" (Locke II, 135, emphasis added). Human law is to enforce its observations:

> "and have by human laws *known penalties annexed to them, to inforce their observation*. The rules that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, i.e. to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind, *no human sanction can be good, or valid against it*." (Locke II, 135, emphasis added).

Natural law and its obligations surpass any human law that opposes them.

A modern interpreter of Locke, Judge (2002) concludes that Locke's limits are still intact after the creation of societies:

> "The constraints on waste and sustainability follow as logical extensions of the telos of creation, and as such, both constraints on private acquisition continue to hold even after the state of nature has been replaced by civil society . . . . [T]his original law of nature, for the beginning of property, in what was before common, *still takes place*;

[1156] Macpherson, (1951), 552. See p. 34.
[1157] See p. 99 and p. 165.
[1158] See p. 29.

and by virtue thereof."[1159] (See also Locke II, 30).

Natural law thus remains valid after the creation of societies. I can find no reference in Locke that removes natural law limitations on property; instead, Locke is one of the few natural law teachers who provides clear examples of the eternal validity of these limitations. For example, Locke clearly says that the "bounds of the law of nature" are always to be observed. We all have the natural right to order our actions in liberty as long as the limitations of the law of nature are kept. The "state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, *within the bounds of the law of nature*" (Locke II, 4, emphasis added).

To Locke, natural law "*obliges every one*: and Reason, which is that Law, *teaches all Mankind, who will but consult it* …" (Locke II, 6, emphasis added). Locke further makes it clear that the same law of nature that gives humans the right to property also imposes limits on this right: "The *same law of nature, that does by this means give us property, does also bound that property too*" (Locke II, 31, emphasis added). This can be confirmed by Locke's text on education: "I think people should be accustomed, from their cradles, to be tender to all sensible creatures, and *to spoil or waste nothing at all*" (emphasis added).[1160]

Locke argues that at the beginning of humanity, there could be no quarrels not only because of few spenders and plenty of natural provisions but "especially" because those first humans kept the limitations set by reason or the natural law for the good of the whole.

> "And thus, considering the plenty of natural provisions there was a long time in the world, and the few spenders; and to how small a part of that provision the industry of one man could extend itself, and ingross it to the prejudice of others; *especially keeping within the bounds, set by reason, of what might serve for his use;* there *could be then little room for quarrels or contentions about property* so established." (Locke II, 31, emphasis added)

This is confirmed by Locke's view that the first humans had the full capacity of reason (Locke II, 56, 57).[1161] The rational person will thus act within the bounds of reason or natural law limitations. Locke asks when a man can be considered to be under the knowledge of the law of nature. He answers that it is only when he can act within the bounds of reason:

> "*Is a man under the law of nature? What made him free of that law?* what gave him a free disposing of his property, according to his own will, within the compass of that law? *I answer, a state of maturity wherein he might be supposed capable to know that law, that so he might keep his actions within the bounds of it.* When he has acquired that state, he is presumed to know how far that law is to be his guide." (Locke II, 59, emphasis added)[1162]

Man is also "presumed" to know the bounds of this law as well as the limits of his freedom. A rational creature is to let reason and the limitations of natural law to guide all his actions.[1163]

[1159] Judge, (2002), 332, 333, 336.
[1160] Locke, (1693), *Education*, Para. 116.
[1161] See p. 64 and p. 180.
[1162] Locke comments on those "*so living within the rules of It* [reason]" (Locke II, 60); see also p. 171.
[1163] Further, "both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds" (Locke II, 137).

Locke is not the first to insist on natural law rights and obligations; Grotius, for example, claims that if there is no obligation, there cannot be a right:

> "[T]he word Right, which has the same meaning as Law, taken in its most extensive sense, to *denote a rule of moral action, obliging us to do what is proper.* We say OBLIGING us. For the *best counsels or precepts, if they lay us under no obligation to obey them, cannot come under the denomination of law or right".* (emphasis added)[1164]

In addition, Vattel (1747) writes, "[T]he natural laws are, in particular, those which *oblige us by nature* or whose *basis is to be found in the essence and nature of man* …" (emphasis added).[1165] Gottfried (1774) says that a law can only be such when it expresses an obligation and "an obligation which man can discern from philosophical principles is referred to as *natural obligation.*" (emphasis added)[1166] Höpfner (1780) writes, "A natural law is that which *expresses a natural obligation*."[1167] Bayne (1956) agrees and says that man is free to choose whether to heed the natural law demand that man follow reason. This freedom of choice is moral in nature while aiming for the peaceful preservation of the whole. Reason warns of the damaging consequences when one does not follow it:

> "The way man is put together imposes limitations upon him, *moral because he is free to accept or disregard them*, but *real, nonetheless, because his reason tells him that to disregard them will produce undesirable consequences* . . . . It is variously phrased as: follow your nature; act according to your proper end; maintain order; act for your rational end in conformity with your total nature; bring your essential being to completion; *follow your rational inclinations; do good and avoid evil* (meaning what is good and bad in light of human nature), etc. *In other words, act according to reason* . . . this principle seems self-evident and corresponds to the fact of man's sense of moral obligations." (emphasis added)[1168]

Bayne summarises the main principle of natural law as doing good and avoiding evil—acting in accordance with the rational inclination or following reason.

I reiterate the irony of a philosophy that firmly opposes natural law, calling it "nonsense upon stilts,"[1169] while arguing for corresponding rights and obligations. The utilitarian movement has misused Bentham's comment in its campaign against natural law. Bentham simply opposed conferring natural rights to humans without any correlating limitations. He insists that "rights" are created by law, and to be meaningful, others cannot interfere with those rights. For Bentham, if there were a "right" without any kind of restraint, anarchy would result.[1170] It is thus odd that he and other utilitarian thinkers promote equal rights for animals, which do not have the capacity to perform such corresponding obligations.

As mentioned previously, Rousseau (1754) was another important source; his text is the basis for the utilitarian movement to abolish the test of reason for animals. Notwithstanding the

[1164] Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 9, Para. 1.
[1165] Vattel, (1747), Part 1, Ch. 4, Sec. 31.
[1166] Gottfried, (1774), *Prlegomena iuris naturalis* , Part. 49, p. 42. Cited in Daston, Stolleis, (2008), 60–66.
[1167] Emphasis added. Höpfner, (1780), Sec. 8, 1, note 5; Sec. 20, 13.
[1168] S.L.R., (1957), 479 citing Bayne, (1956), 159, 180, 183.
[1169] Mill, (1833), 392-393 citing Bentham, (1843), *Anarchical Fallacies*, Vol. 2.
[1170] Ibid.

argument for equal rights for animals, it is clear that natural law limitations play an important role even in this philosophical opponent to natural law.[1171] The obligations guarantee the peaceful preservation of the whole and prevent the abuse and conflict stemming from giving in to desires of the self.

The need to follow natural law obligations is further confirmed by Locke's interpreters, such as Tully (1980), who somewhat agrees with Dunn and Ashcraft, and who argues that to Locke, every right to property is always held conditional on a social duty or obligation for the preservation of mankind: "The fundamental and undifferentiated form of property is the natural right and duty to make use of the world to achieve God's purpose of preserving all his workmanship."[1172] Tully claims that the right to use confers a duty to preserve the whole for the good of the whole.

Tully, Dunn, and Ashcraft confirm Locke's natural law limits that guarantee the safe preservation of mankind. Ashcraft (1987) indicates that the natural right to self-preservation confers a positive duty "to provide for the subsistence of everyone else, where this does not come into competition with a person's efforts to provide for his own subsistence."[1173] Waldron (1988) adds that this natural right "imposes positive duties on men to satisfy others' needs (or at least stand aside while the needy make use of property acquired by those who are not needy), and…these duties are correlative to the rights of the needy."[1174]

Dunn (1969) notes that we are sinners, so the law of nature must keep us from interfering with each other's rights and help us work towards the common good:

> "[B]ecause men are fallen, because they are sinners, they interfere with each other's performance of these divine assignments. Their relationship are governed by the law of nature and when they encroach on each other's jural space, violate each other's rights, they are liable to punishments according to this law. The sufficient sanctions of this law are exerted in the next world."[1175]

Dunn thus agrees that natural law limits create obligations because our own interests blind us to the natural law and it rights. I agree and note that this aligns with Locke's view on self-interests as blinding man from the law of reason (Locke II, 12, 124, 136).[1176]

Forde (2001) notes, "[T]he pursuit of *individual self-interest must be bounded by the law of nature,* which commands that each strive, 'as much as he can, to preserve the rest of mankind" (Locke II, 6, emphasis added).[1177] Self-interests are to be limited by the natural law so as to preserve the rest of mankind.

Von Leyden (1956) confirms that natural law entails following right reason to discover the obligation to promote the common good: "(*R)eason not only indicates or teaches what man's duties are,* but at the *same time makes his duties binding*; it is thus *a self-depending source of*

[1171] See more on the utilitarian philosophy on p. 207.
[1172] Tully, (1980), 98-99; 164-165, 158-160, 161, 99-105; Locke II, 30, 38, 45, 50.
[1173] Tully, (1980), 132, citing Ashcraft, (1987), 126-27.
[1174] Tully, (1980), 132, citing Waldron, (1988), 146.
[1175] Dunn, (1969), 126-127.
[1176] For further confirmation of these authors and more, see p. 231.
[1177] Forde, (2001), 398, 401.

obligation."[1178] Von Leyden confirms that reason does not only demonstrate rights and obligations but also obliges one to follow them.

Judge (2002) provides additional support: "[W]hile Locke allows that *property rights* might be altered by civil society, the just private acquisition of goods previously held in common continues in civilized society *to be constrained by the same rules as those existing in the state of nature*" (emphasis added).[1179]

Below, I explore Locke's examples of natural law limits to demonstrate that a person can find full enjoyment in his property if he avoids waste. If one takes more property than he can use, any subsequent waste could damage the share of others. Locke states, "[N]othing was made by God for man to spoil or destroy." The purpose of the natural law is the preservation of the whole (Locke II, 7). Locke emphasised that the property laboured on must be designated for a certain usage and then used, and it cannot be destroyed:

> "But how far has he given it us? To enjoy. *As much as any one can make use of to any advantage of life before it spoils*, so much he may by his Labor fix a property in: whatever is *beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy.*" (Locke II, 31, emphasis added)

Grotius corroborates this specific limit: "Each man could at once take whatever he wished for *his own needs*, and *could consume whatever was capable of being consumed*...." (emphasis added).[1180] Pufendorf's state of nature contains a natural law limitation: "[T]here was a tacit convention that each man could appropriate for *his own use*, primarily *the fruits of things, what he wanted*, and *could consume what was consumable*" (emphasis added).[1181] So the capacity of consummation is limited such that the rights of others are not harmed. Below is a detailed analysis of the modern view on the natural law limitations.

5.2 **Recognized Limitations**

5.2.1 No waste/No spoilage and the capacity of consumption

Locke notes that each person may accumulate unlimited perishables for any purpose, including amusement, security, or simple comfort. However, if a potentially useful product is destroyed or spoiled without being used, it would be a waste of the common share of others. Property such as material goods or land and its products should not be left to perish without use. "As much as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. . . . Nothing was made by God for men to spoil or destroy" (Locke II, 31).

This limitation is still valid, although many argue that it became obsolete after the introduction of the use of money. Yet this limitation refers only to perishable goods such as land, fruit, or wool, which could preserve life—not to durable goods that are valuable, such as shells, diamonds, gold, or money (which, in being accumulated, would not harm the share of

[1178] Emphasis added. Von Leyden, (1956), 23-35. See also Ref. under p. 32.
[1179] Judge, (2002), 332, 333, 336. See also Ref. under p. 31. For further modern Ref. supporting obligations of natural law to remain valid under political government see p. 30-34 (Tully, Ashcraft, Judge, Von Leyden, Dunn, Donald, Seliger). See also Pufendorf in p. 54, footnote No. 279.
[1180] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 1.
[1181] Pufendorf, (1749), *The law of nature and of nations*, Bk. IV, Ch. 4, Para. 2 and Bk. IV, Ch. 4, Para. 9.

others):

> "[I]f he would give his nuts for a piece of metal, pleased with its colour; or exchange his *sheep* for shells, or *wool* for a sparkling pebble or a diamond, and keep those by him all his life he invaded not the right of others, he might heap up as much of these durable things as he pleased; the *exceeding of the bounds* of his just property not lying in the largeness of his possession, but the *perishing of anything uselessly* in it." (Locke II, 46, emphasis added)

Locke is not necessarily against the use of money. He even thought it could be necessary to facilitate exchange and increased the possibility to accumulate comfort and security without causing harm to anyone. However, the limitation on perishable products with potential use remains valid.

The no waste limit is an important natural law limit recognized in almost every text of interpretation relating to Locke. Within Locke's *Second Treatise*, it is mentioned in II, 31, 36, 37, 38, 46, 48 and 51.[1182] This limits the accumulation of perishable property for self to actual use to avoid waste of items that could be of use to others. This restriction is for the general good and preservation of mankind because waste "invade[s] his neighbour's share" (Locke II, 37).

Tully (1980) writes, "Locke understands this limit in two ways; as limiting the amount to what a person can use; and limiting a person's utilization of any of that amount to use only, not abuse."[1183] I disagree with Tully that this limit restricts a person's use to avoid abuse. I argue that Locke is clear that a product can be used for any purpose, "[a]s much as anyone can make use of to any advantage of life" (Locke II, 31 below). The limit keeps property from disuse; it should be used "before it spoils" because it is the share of others that is spoiled; "Nothing was made by God for men to spoil or destroy" (Locke II, 31). Locke noted, "property not lying in the largeness of his possession, but the *perishing of anything uselessly* in it" (Locke II, 46, emphasis added).

Locke encourages the enjoyment of property for any purpose, including comfort and amusement. But "how far has he given it us? To enjoy. *As much as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. Whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for men to spoil or destroy*" (Locke II, 31, emphasis added). Simmons raises a possible difficulty with the practical application of the no waste limit. Locke writes that it is in the taking—"*so much he may by his labour fix a property in*" (Locke II, 31, emphasis added). Locke also mentions quantity: "*as many…as he could*" (Locke II, 37–38, emphasis added). Does Locke refer to as much as one may labour for or as much as one can hold? To Simmons, Locke's intention was for the waste limit to be based on both taking and holding, which would be consistent with the appropriation of as much as a person can reasonably expect to use.[1184]

5.2.1.1 Usefulness basis

For Locke, before the introduction of money, no human needed more property than was

[1182] See also Locke I, 40.
[1183] Tully, (1980), 122.
[1184] Simmons, (1992), Ch. 5.4., 287.

useful for life as needs were based on usefulness and convenience:

> "The measure of property nature has well set by the *extent of men's labour and the conveniences of life*: no man's labour could subdue, or appropriate all; *nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for as good, and as large a possession (after the other had taken out his) as before it was appropriated.*" (Locke II, 36, emphasis added)

Products were based on usefulness, so there was no temptation to take more than necessary. Locke further shows that the natural "intrinsic value" depends only on the "usefulness" of the property "to the life of man":

> "This is certain, that in the beginning, *before the desire of having more than man needed had altered the intrinsic value of things, which depends only on their usefulness to the life of man; or had agreed,* that a *little piece of yellow metal, which would keep without wasting or decay,* should be worth a great piece of flesh, or a whole heap of corn; though men had a right to appropriate, *by their labour, each one of himself, as much of the things of nature, as he could use: yet this could not be much, nor to the prejudice of others,* where the same plenty was still left to those who would use the same industry." (Locke II, 37, emphasis added)

Locke says that before placing value on money or gold, each can appropriate, on the basis of labour, as much as can be used. This fulfils natural law limits by guaranteeing that no harm is done to others—it "*could not be much, nor to the prejudice of others*" (Locke II, 37, emphasis added).

Locke then clearly explains that if the object of the labour is not used, perishes, and/or is wasted, it violates natural law because the share of other commoners is damaged. One has no right to take more than one can use if it is wasted through disuse. Locke is also very clear that one who keeps property that perishes without use is liable for invading another's share:

> "Before the appropriation of land, he who ... so employed his pains about any of the spontaneous products of nature, as any way to alter them from the state which nature put them in, by placing any of his labour on them, did thereby acquire a propriety in them: but *if they perished, in his possession, without their due use;* if the *fruits rotted,* or the *venison purified,* before he could spend it, he offended against the common law of nature, and was liable to be punished; he *invaded his neighbour's share, for he had no right,* farther than his use called for any of them, and they *might serve to afford him conveniences of life.*" (Locke II, 37, emphasis added)

Locke gives specific examples of perishables that fall into disuse—"*fruits rotted*" and "*venison putrefied*" before consumption. Allowing the good or land to perish without use rises to the level of taking more than one's share or robbing the share of others. This violates the law of nature and warrants punishment (Locke II, 37).[1185]

[1185] Before the introduction of money, Locke says there was no temptation to take more than one "could make use of" because right and convenience went together. Locke further details that it was "useless" as well as "dishonest" to take more than was needed and actually used. "[T]here could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. *Right and conveniency went together;* for as a man had a right to all he could employ his labour upon, *so he had no temptation to labour for more than he*

Locke found it impossible to take more for the self than could be consumed before spoil/waste.

5.2.1.2 No waste limit on Land and its perishable products

Locke notes that the "*same measures* governed the *possession of land*" (Locke II, 38, emphasis added). He frequently mentions no waste of land and its products: "before it spoiled," "could feed and make use of," "made use of before it spoiled," "whatsoever he enclosed, and could feed, and make use of" (Locke II, 38). He gives examples of "grass rotted on the ground" and "fruits perished without gathering" (Locke II, 38). To Locke, this is considered waste even if enclosed by the appropriator. As such, it "might be the possession of any other" (Locke II, 38):

> "Whatsoever he tilled and reaped, *laid up and made use of, before it spoiled*, that was his peculiar Right; whatsoever he enclosed, and *could feed, and make use of*, the Cattle and Product was also his"… "The *same measures governed the possession of land* too: whatsoever he tilled and reaped, laid up and *made use of, before it spoiled*, that was his peculiar right; whatsoever he *enclosed*, and *could feed, and make use of*, the cattle and product was also his. But if either the *grass of his enclosure rotted* on the ground, or the *fruit of his planting perished without gathering*, and laying up, this part of the earth, notwithstanding his enclosure, was *still to be looked on as waste, and might be the possession of any other*." (Locke II, 38, emphasis added)

Locke thus makes it clear that even if the land has been enclosed, any unused, perished, or rotted item could be considered the property of others for it encroaches on the share of other commoners who need it to live on.

To Locke, land lying without use can be considered waste: "land that is left wholly to nature, that hath *no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste;* and we shall find the benefit of it amount to little more than nothing" (Locke II, 42, emphasis added). For Locke, it is the labour on the land that gives the land an added value to the common stock. This following paragraph in Locke's *Second Treatise* is important to my argument:

> "*[M]ore than real use, and the necessary support of life. Now of those good things which nature hath provided in common, every one had a right (as hath been said) to as much as he could use, and property in all that he could effect with his labour; all that his industry could extend to, to alter from the state nature had put it in, was his"*. He that gathered a hundred bushels of acorns or apples, had thereby a property in them, they were his goods as soon as gathered. *He was only to look, that he used them before they spoiled, else he took more than his share, and robbed others. And indeed it was a foolish thing, as well as dishonest, to hoard up more than he could make use of. If he gave away a part to anybody else, so that it perished not uselesly in his possession, these he also made use of.* And if he also bartered away plums, that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury; he wasted not the common stock; destroyed no part of the portion of goods that belonged to others, *so long as nothing perished uselesly in his hands. Again, if he*

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could make use of. This left no room for controversy about the title, nor for encroachment on the right of others; what portion a man carved to himself, was easily seen; and *it was useless, as well as dishonest, to carve himself too much, or take more than he needed*." (Locke II, 51, emphasis added).

> *would give his nuts for a piece of metal*, pleased with its colour; or exchange his sheep for shells, or wool for *a sparkling pebble or a diamond, and keep those by him all his life he invaded not the right of others, he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it.*" (Locke II 46, emphasis added)

So one may acquire a large property for "real use" or the "necessary support of life." He says it is dishonest and foolish to take more than one can use and that nothing should perish uselessly in one's hands. He then clearly says that one can exchange a perishable good for a piece of metal (implying the use of money) that can last or a sparkling heap or a diamond. He can even keep it for all his life for there is no waste in it. One may "keep those by him all his life he invaded not the right of others, he might heap up as much of these durable things as he pleased." One may accumulate unlimited "durable" objects. The no waste/spoilage limit does not concern durable and valued goods like money or gold—only goods that perish through disuse; this wastes the share of others.

Another option is to give away fruits of the land to avoid waste. This would be considered a proper use: "If he gave away a part to anybody else, so that it perished not uselesly in his possession, these he also made use of" (Locke II, 46). Locke says here that even after exchanging the good for money, the limitation remains valid for "the exceeding of the bounds of his just property not lying in the *largeness of his possession, but the perishing of anything uselessly in it*" (Locke II, 46, emphasis added). Locke thus justifies the limitation of property accumulation only to avoid "perishing." The purpose is not to avoid accumulating possessions in general.

Grotius and Pufendorf recognize the same limit. "[T]he first one taking possession would have the right to use things not claimed and to consume them *up to the limit of his needs*."[1186] And "[e]ach man could at once take whatever he wished for *his own needs*, and *could consume whatever was capable of being consumed*...."[1187] Grotius explicitly states that this is a "*right to use things* not claimed and to *use them up to the limit of his needs*."[1188] Pufendorf noted the same regarding the state of nature.[1189] So even those who influenced Locke's sate of nature limited consummation to avoid harm to others. Locke did not invent this limit; it is a long-recognized natural law limitation.

5.2.1.3 Examples of perishable goods to which the waste limit is applicable

Locke lists examples of perishable goods that are potentially useful:

"*fruits rotted*, or the *venison purified*" (Locke II, 37, emphasis added).

[1186] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1, Para. 5, emphasis added.
[1187] Grotius, (1625), *War and Peace*, Bk. II, Ch. 2, Sec. 2, Para. 1, emphasis added.
[1188] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1, Para. 5, emphasis added.
[1189] "[S]o long as the actual bodies of things were not yet assigned to certain individuals, there was a tacit convention that each man could appropriate for his own use, primarily the fruits of things, what he wanted, and *could consume what was consumable*" (emphasis added). Pufendorf, (1749), *The law of nature and of nations*, Bk. IV, Ch. 4, Para. 2 and; Bk. IV, Ch. 4, Para. 9. However, I argue that Locke was less concerned with limits of need because he is clear that it can be used for any purpose and advantage of life, more than needs. The limit is that product or land is actually used /consumed.

"*grass of his enclosure rotted* on the ground" or the "*fruit of his planting perished without gathering*, and laying up, this part of the earth" (Locke II, 38, emphasis added).

"…a hundred bushels of acorns or apples" *He was only to look, that he used them before they spoiled"* "bartered away plums, that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury; he wasted not the common stock"; " sheep" "wool" (Locke II 46, emphasis added).

Accumulation after the introduction of money

Macpherson and his followers see Locke's mention of money as a turning point in unlimited appropriation. He claims money allows men to "*transcend*" the spoilage limitation and freely accumulate property.[1190] He says the introduction of money "removed the technical obstacle which had prevented unlimited appropriation from being rational in the moral sense, i.e. being in accordance with the law of nature or law of reason."[1191] Men can now accumulate as much as they want without causing a waste because money, as well as gold and diamonds, cannot perish.[1192] Macpherson (1951) states, "Locke's astonishing achievement was to base the property right on natural right, and then *to remove all the natural law limitations from the property right*"[1193](emphasis added).

Most traditional interpreters of Locke see money as removing the natural law limit of no waste because of the possibility of exchange in commodities of life—items that can be stored in perpetuity without spoiling without causing harm. Even if there were no land, the products of the appropriated land would be beneficial.

In continuation of my analysis of and conclusion to the modern debate on this traditional view,[1194] I point to Locke's words regarding limits existing even if a piece of metal or money lasts because it cannot perish. He advocates unlimited accumulation of durable objects but reiterates that the no waste limit protects the share of perishable items and/or land of the community. Even in a world where goods are exchanged for money, the limitation remains valid: "the exceeding of the bounds of his just property not lying in the *largeness of his possession, but the perishing of any thing uselessly in it*" (Locke II 46, emphasis added). The limit still prevents waste or "perishing." Money could extent the natural law limit based on consent. Money is indeed necessary for such an expansion of this limit when it comes to comfort and security (Locke II, 37).[1195] Locke recognizes that money is a source of inequality.[1196] Money forced man to accept a "disproportionate and unequal Possession of the Earth" (Locke II, 50; Locke II, 36, 37). After the introduction of money, when needs grew and populations increased, Locke recognized that mankind had found a way to stretch the natural law limit of no spoilage by agreeing to put value on money that cannot be spoiled and use it in an exchange involving perishable items necessary for life. "Money is a "lasting thing" that men can keep "without spoiling" (Locke II, 47).[1197]

[1190] Macpherson, (1962), 204.
[1191] Macpherson, (1962), 235. For a detailed discussion of the spoilage limitation, see Tully, (1980), 126-27; Ashcraft, (1987), 131; and Sreenivasan, (1995), 30-31.
[1192] See also Strauss, (1953), 221-247; Schlatter, (1951), 151; Steiner, (1977), 44; Moulds, (1964), 187; Day, (1966), 207–220; Squadrito, (1979), 255–258.
[1193] Macpherson, (1951), 552.
[1194] Here I refer the reader to my analysis of Locke's take on money from p.34.
[1195] See p. 34 and p. 41.
[1196] See p. 34.
[1197] See p. 38.

Locke continues and explains that after the introduction of money, mankind found a way to continue to "enlarge" possessions while placing a value on money: "And as different degrees of industry were apt to give men possessions in different proportions, so this *invention of money gave them the opportunity to continue and enlarge them*" (Locke II, 48, emphasis added).

Locke further writes that men succeeded via mutual consent to enlarge their possession while placing value on non-perishable goods that can be stocked without injury to others. Locke also recognizes that the agreement on this value is "a disproportionate and unequal possession of the earth" (Locke II, 50). To Locke, with the use of money; "it is plain, that *men have agreed* to a *disproportionate and unequal possession of the earth*, they having, by a *tacit and voluntary consent, found out, a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injuring anyone*…" (Locke II, 50, emphasis added).[1198] But this does not eliminate the natural law restrictions on perishable goods: "Nothing was made by God for men to spoil or destroy" (Locke II, 31, 6, emphasis added). Even if the introduction of money is based on human will and consent, it is still subject to the superiority of the law of nature and its rights and correlating limitations (Locke II, 135, 12, 131, 136, 137).[1199]

This thesis argues that human consent does not replace the natural law basis of property rights, as Macpherson and others claim. Consent is simply an additional basis of property rights to ensure the better protection of property, liberty, and possessions.[1200] To Locke, the law of nature cannot be binding, in spite of its superiority, at long as we live in a world with people who do not follow the dictates of reason due to bias and self-interest (Locke II, 124).[1201] Most people are subject to such a bias, but all have the right of self-government; thus, the natural law basis of property rights is unsafe and insecure (Locke II, 13, 37, 92, 101, 123, 124, 126, 127).[1202]

Locke might see the consent to use money as a necessary basis of obligation to avoid this unsafe state. But money does not make the no waste limit obsolete. It only makes possible the enlargement of the ability to accumulate non-perishable goods, security, and comfort (Locke II, 37).[1203] Nothing suggests that this limit no longer exists for perishable goods. Locke did recognize that money creates inequality, but it is not morally wrong.[1204]

Ashcraft (1986) argues that money and gold are justified as long as they support the "public good": "The invention of money, and commerce with other parts of the word, in other words, may themselves be justifiable practices if they are viewed as being consonant with the natural law command to provide for the common good—which is the way Locke views them—*but they provide no justification whatsoever for the 'wasteful' use of land property.*"[1205]

The justified use of money does not cancel out the validity of the natural law limit of no waste. Ashcraft notes that avoiding waste of land would promote the common good and make guarantees to future proprietors. This supports the aim of natural law: the safe preservation of

[1198] To avoid repetition and for important confirmation, I refer the reader here to my analysis of the modern debate of the validity of natural law even after the use of money and creation of societies from p. 34.
[1199] See p. 29.
[1200] See p. 34.
[1201] See p. 32.
[1202] See p. 69.
[1203] See p. 137.
[1204] See p. 36.
[1205] Ashcraft, (1986), 271, emphasis added.

the whole (Locke II, 7) and harming no one through appropriation (Locke II, 6).

Moulds (1964) notes that "money does not eliminate the limitation of natural law; it enables one to go further under those limitations."[1206] Simmons (1992)[1207] and Mackie (1982) claim that even if Locke regrets the use of money, he does not show that it is contrary to God's intentions or that its use will end legitimate appropriation per the rules of natural property.[1208]

Few modern interpreters of Locke claim that the waste limitation is the only restriction in Locke's eyes and that the "enough and as good" was not a limit but merely a sufficient condition for property rights in changed conditions. Waldron (1988) notes, "[E]nough and as good left in common for others, is seen by Locke as a fact about acquisition in the early ages of man, rather than as a natural limit or restriction on acquisition."[1209] To Macpherson, the spoilage limit was Locke's most important: It was sufficient if all followed it.[1210]

But Simmons (1992) posits that with "enough and as good," waste would not harm anyone. He mentions Plamenatz's and Golwin's arguments that a waste limit could even become irrelevant or inadequate.[1211] Simmons then answers that if each individual chooses a share of property, this right is infringed as he is denied free choice. He also claims that for Locke, waste can harm others even during times of plenty.[1212]

Simmons, Tully, and Ashcraft demonstrate that even if money and consent enlarge possession, when it concerns perishable goods that help in life preservation, the natural law limit of no spoilage is timelessly valid.[1213] Ashcraft (1986) clearly agrees with Locke that the waste limit is always relevant and is at the forefront of his theory: "*[N]ot only does the prohibition against waste not disappear in the course of his discussion of property, but it can hardly be banded an 'irrelevant' part of that discussion*" (emphasis added).[1214] Ashcraft uses Locke's own references and his own general view on waste[1215] to reject the contention of Strauss and his followers, who argue that the use of money makes the limit obsolete.

5.2.1.4 Locke's general view on waste

In Locke's correspondence with Lady Masham, he states that waste of any kind is forbidden by natural law so as to preserve as many existences as possible. Lady Masham writes, "Waste of any kind he could not bear to see…not would he, if he could help it, let anything be destroyed which could serve for the nourishment, maintenance, or allowable pleasure of any

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[1206] Simmons, (1992), Ch. 5, 278-298.
[1207] Simmons, (1992), 301-305.
[1208] Simmons, (1992), 305, citing Mackie, (1982), *Review of Tully 1980,* 93. See discussion beginning on p. 36.
[1209] Simmons, (1992), Ch. 5, 289 citing Waldron, (1979), 320-322; See also Waldron, (1988), 211-218 and; Drury, (1982), 33-34.
[1210] Macpherson, (1962), 201.
[1211] Simmons, (1992), Ch. 5, 286, citing Plamenatz, (1963), Sec. 1, 242-244; Goldwin, (1987), 490.
[1212] Simmons, (1992), Ch. 5, 286-298.
[1213] Simmons, (1992), Ch. 5, 278-298.
[1214] See Plamentaz, (1963), Sec. 1, 242; see also Ashcraft, (1986), 267.
[1215] Ashcraft, (1986) notes, "*Strauss's connotation that 'the natural law against waste as no longer valid in civil society' . . . is mistaken not only in terms of the* . . . but also deriving from the general opinion Locke has on waste." See Ashcraft, (1986), 273, emphasis added . "Throughout the chapter on property, Lockeinsists that those who cultivate the land contributes to the common good, while those who *do not do so are wasteful landowners and, from the standpoint of society, useless individuals*." Ashcraft, (1986), 271 (emphasis added).

creature."[1216] (emphasis added). Locke specifically says that waste is forbidden as it harms self and all creatures in nourishment and maintenance.

Ashcraft notes that to Locke, "People should be accustomed from their cradles to spoil or waste nothing at all." The "*spoiling of anything to no purpose'* is nothing less than *'doing of mischief'*."[1217] This demonstrates Locke's view of the universality of the no waste limit. Locke intended the limitation to remain valid and reflected in the positive law of property. As further corroboration, Ashcraft cites Locke in criticizing the "*expensive vanity*" of "*lazy and indigent people*" who "'*waste*' their *resources* through *extravagant living*."[1218] Locke opposed luxury and "extravagant living" as they were a "waste of resources."[1219]

Locke's "Essay on *Education*" is in clear agreement: "I think people should be accustomed, from their cradles, *... to spoil or waste nothing at all*" (emphasis added).[1220] "Children should from the beginning be bred up … *and be taught not to spoil or destroy any thing, unless it be for the preservation or advantage of some other that is nobler.*" (emphasis added)[1221]

As indirect support, Locke explains that the need to dominate property as children shows that if the "roots of almost all the injustice and contention that so disturb human life, are not early to be weeded out, and contrary habits introduced, neglects the proper season to lay the foundations of a good and worthy man."[1222] Locke continues and recommends that parents are "to teach them to part with what they have, easily and freely to their friends."[1223] Forde (2001) confirms this and adds that Locke mentions that parents are to compensate children for any loss while verifying that children profit from being liberal with their possessions.[1224]

5.2.1.5 Conclusion

I argue against most interpreters of Locke who claim that the "no spoilage" or "no waste" limitation is made obsolete due to the advent of money via consent. I argue rather than consent is a necessary and additional basis of property rights and promotes safety, but the no waste limit remains universally and timelessly valid for goods that are possibly perishable and useful to the preservation of life. This is so even after the creation of society because natural law and its limitations are superior to any positive law (Locke II, 135, 12, 131, 136, 137).

The use of money has allowed the enlargement of this natural law limitation so that each can enlarge possessions and accumulate more than what is immediately used (Locke II, 36, 37, 51) because money and gold are durable objects that cannot spoil. The assignment of value encouraged exchange with perishable goods necessary for life.

To Locke, money (as well as shells, pebbles, gold, or diamonds) can indeed be accumulated without invading others' share because a person can accumulate it for long period of time, not

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[1216] Ashcraft, (1986), 266, citing Locke, (1704) *Private correspondence to Lady Masham*, Sec. 2, 536, emphasis added.
[1217] Ashcraft, (1986), 266-268, emphasis added, citing Locke *STCE*.
[1218] Ashcraft, (1986) , 268, emphasis added, citing Locke, (1824), *Locke Works*, Vol. 4, 53-55, 72-75.
[1219] See Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1; see also p. 187.
[1220] Locke, (1693), *Education*, Para. 116.
[1221] Ibid.
[1222] Ibid., Para. 105.
[1223] Ibid., Para. 110.
[1224] Forde, (2001), 404, 408, citing Locke, (1693), *Education*, Para. 110.

using it, and avoiding any waste. The limit is thus invalid only as to those imperishable goods that receive value by the consent of man. But all perishable goods, such as fruits, products of land, land, and anything else useful to life preservation are subject to the natural law limitation. It is not the quantity of property accumulated that matters but rather the waste of perishable objects within that property, which could harm the share of others (Locke II, 46).

Locke's text clearly indicates that this no spoilage limit continues after the introduction of money. Nothing should perish from non-use (Locke II, 31). Money is no obstacle as it cannot be spoiled. It can be gathered by one's own labour. Man can accumulate all things to provide for needs of comfort and security or convenience of life (Locke II, 37).[1225] The purpose is for the object to be used by the appropriator, for any kind of enjoyment. It can even be kept for many years until the appropriator decides one day to use it. However, when it is proven that the object perishes or spoils due to non-use, then the share of others is harmed as others could possibly use this item to sustain life.

A practical application of this limit on the waste of perishable items is to be reflected in the positive law. Any perishable object that is proven spoiled after non-use could be transferred to the possession of another interested in its use for the support of life. This would entail a radical change in the law of property so that the owner is a trust holder of the property. All actions on the property and its products would have to respect the good of the common stock. No more wasteful products or land could be allowed.[1226]

5.2.2 "As enough and as good"/Sufficiency limitation/"Fair share limit"

The "as enough and as good" limit is considered separately for its value in guaranteeing the independence of each individual to govern the self without depending on others. This means that in appropriating land, for example, one has to ameliorate the value of this land, ensuring that future commoners are not harmed for that a similar use or value of the land is possible. This principle stands for material goods as well. Whenever property is taken, it must not be neglected, and at the very least, it must be maintained for future use.

Property rights will cause no harm to anyone if an aspect of the limit on the waste of perishable goods leaves "*enough and as good*" a share of property for others to appropriate (Locke II, 27, 33, 36, 38). "*As enough and as good*" is an important natural law limitation. It is also called the "*sufficiency limitation*" or the "fair share limit" and is presented in Locke's *Second Treatise* (II, 27, 33, 36). Many have analysed this limitation, so I simply present a summary of the most relevant modern debate (based mainly on Simmons (1992)).

The traditional interpreters of Locke argue that this "*as enough and as good*" limit disappeared with the creation of societies. Macpherson explains that the economic business activity after the introduction of money actually increases the value of the common stock because common stock is no longer dependent and limited to the scarce quantity of land and natural resources: "the increase of people and stock, with the use of money, *had made land scarce, and so of some value*" (Locke II, 45, emphasis added).[1227] Even when there is not enough good land or similar property left for everyone, all individuals still have the opportunity to be economically viable without depending on others.[1228] People can increase

[1225] See references on security and comfort, p. 137.
[1226] Further analysis of the modern debate and additional difficulties with the recognised limitations and conclusions continues below.
[1227] Macpherson, (1962), 205-207. See Locke II, 45 on p. 37.
[1228] Macpherson, (1962), 205-207.

wealth in different ways, so the limit of "*as enough and as good*" is no longer needed.[1229]

Tully (1995) confirms this in his argument that Locke gives no property rights in land:[1230]

> "solves the consent problem. Although there is not enough and as good land left in common after the introduction of money, markets and the development of commercial agriculture, there are more than enough and as good opportunities to labour in order to preserve oneself. Since the initial natural claim right is a right to the means of preserving oneself by labour, not a right to land, the right is satisfied after the introduction of money in spite of, and partly due to, the great inequalities in possessions. Moreover, as Sreenivasan demonstrates, since the sufficiency limit that there should be "enough, and as good left in common for others" (Locke II, 27, line 12) is never defined by Locke as enough and as good land left in common, it can be satisfied by land in the age of land plenty and by access to the means of production in the age of scarcity."[1231]

Tully (1995) later says that with the enclosure of land, Locke's intention was that "*cultivation and industry increase the 'common stock' by producing more opportunities to labour*, in contrast to hunting and gathering, and this by expanding the division of labour."[1232] Tully confirms that he is "now persuaded, the increased 'common stock'" Locke refers to (II, 37, line 12) is the (undeniable) increased stock of opportunity to labour in the expanded division of commercial agriculture, easily "overbalancing" the community of land in hunting and gathering societies (see Locke II, 40).[1233]

Locke at one point speaks of this fair share limit while discussing "*first ages of the world*, when men were more in danger to be lost, by wandering from their company, in the then vast wilderness of the earth, than to be straitened for want of room to plant in" (Locke II, 36, emphasis added).

Locke explains that if this limitation is kept within the state of nature, it is impossible to "intrench upon the right of another." For Locke, if this limitation is taken seriously and applied, no one's share would be harmed by the appropriation. It guarantees the equal share of all future users or that no other's share is harmed—not "to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for *as good, and as large a possession (after the other had taken out his) as before it was appropriated*" (Locke II, 36, emphasis added).

The traditional interpretations argue that this limit operated only until the creation of societies. But Locke uses this limit while speaking on the first ages of the world to show that it ensures no harm by the accumulation of property. It is a general limit on the acquisition of property: "[F]or this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, *at least where there is enough, and as good, left in common for others*" (Locke II, 27, emphasis added).

I firmly disagree with Macpherson's conclusion that the consequence of inequality of material

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[1229] Macpherson, (1962), 205-207. I thus argue that Locke is not necessarily against the economic order after the creation of societies. Locke predicts and justifies it with this limit so that the self-government of each could be secured.

[1230] See Tully's arguments against property rights in land on p. 239.

[1231] Tully, (1995), 125.

[1232] Locke II, 42–43; see Tully, (1995), 124 (emphasis added).

[1233] See Tully, (1995), 125; Sreenivasan, (1995), 107–115.

possessions is class warfare.[1234] Macpherson claims that Locke has overlooked the fact that exchange with money gives no guarantee that the wealth produced by this new economic system will be equally distributed among men, and that he provides no answer for this inequality.[1235] He claims that Locke creates "a positive moral basis for capitalist society, implying thereby that capitalism requires differential rights."[1236] But natural inequalities as to material possessions are inevitable: "*That all men by nature are equal, I cannot be supposed to understand all sorts of equality*: age or virtue may give men a just precedency: excellency of parts and merit may place others above the common level: *birth may subject some, and alliance or benefits others*" (Locke II, 54, emphasis added). As such, certain inequalities in term of material possession seem even be fair in considering the measure of merit and labour in comparison to that of others, or the "just precedency: excellency of parts and merit" (Locke II, 54). The equality of importance is that of self-preservation without interference of others (Locke II, 54).[1237] Inequality of possessions is not in itself wrong as appropriation of a large property is not wrong: "*the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it*" (Locke II 46, emphasis added).[1238] Macpherson's interpretation considers only the material goods; Locke's texts make it clear that material goods are only a means to secure basic property rights of self-preservation and self-government (right to life and liberty).[1239] Locke's references to the "*as enough and as good*" limit leads one to question Macpherson's conclusion; all people deserve the same opportunity of self-preservation without interference of others.

I support Simmons's response to Mautner (1982), who sees no coherent rationale behind the sufficiency and spoilage limits in relation to Locke's labour. But the rationale behind it is equality.[1240] To Simmons, each individual must have at least an equal opportunity not only for self-preservation but also a fair share for an "independent livelihood."[1241] To Locke, this value of equality is an important basis of property rights in that one is to respect the same rights of others (Locke II, 4, 5, 6, 54).[1242] Locke requires an equal independence of each individual in self-government. This is thus in direct contrast with Macpherson's argument that Locke's theory leads to a society divided by class and individual rights.[1243]

Macpherson then argues that "*as enough and as good*" is not really a limit at all but more a consequence of the principle assuring the equal opportunity to acquire property that is necessary for life via labour.[1244] Waldron (1979) concurs and holds that there are other restrictions on property rights that do the same job as this fair share limit[1245]: "Maybe this ('as enough and as good') is *not supposed to operate as a necessary condition on acquisition*: Locke surely did not mean that no one should appropriate any resources if there is not enough for everyone."[1246] "*The proviso is better understood as a sufficient condition*" (emphasis

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[1234] For Macpherson, (1962), Locke "*justifies, as natural, a class differential in rights and in rationality, and by doing so provides a positive moral basis for capitalist society, implying thereby that capitalism requires differential rights*" (Macpherson, (1962), 221, 211-13. See also p. 125.
[1235] Macpherson, (1962), 211.
[1236] Macpherson, (1962), 221. See also p. 125
[1237] See p. 79.
[1238] A full debate and conclusion on the inequality of possession begins on p. 41.
[1239] See my analysis of Locke's broad interpretation of property on p. 118. See also Simmons, (1992), 298-306.
[1240] Simmons, (1992), Ch. 5.4, 288-298, citing Mautner, (1982), 261.
[1241] Simmons, (1992), Ch. 5.4, 288-298, citing Mautner, (1982), 261.
[1242] See p. 79.
[1243] See more on this division on p. 41; see also p. 43.
[1244] Macpherson, (1962), 199, 238, 239.
[1245] Waldron, (1979), 326-328.
[1246] See Waldron, (1979), 319–328, emphasis added.

added).[1247] But Locke clearly uses this limit as a restriction on the acquisition of property:

> "[B]y this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, *at least where there is enough, and as good, left in common for others.*" (Locke II, 27, emphasis added)

Man has a right to all that (land or otherwise) for which he labours. A man who annexes something of his own to the product has a right in it that excludes others from it—"at least where" "enough, and as good, left in common for others." The words "at least where" imply that this is a limit and not just a sufficient condition.

Simmons further objects to Waldron's argument that this limit is only a sufficient condition when discussing the early age of plenteous land.[1248] Locke's texts clearly demonstrate this fair share limit: "[T]here could be then little room for quarrels or contentions about property" taken by labour (see Locke, II, 31. See also Locke II, 36, 39, 51).[1249] Simmons explains that the clear inference is that later, when scarcity became a problem, there was a need to limit property rights to preserve mankind.[1250] Simmons notes other modern authors who claim that the "*as enough and as good*" limit is the only important limitation and renders the no waste limit secondary or even meaningless.[1251] Simmons argues that this is "an odd reading of the second Treatise, given how prominently the waste limit is presented and repeatedly stated throughout chapter 5."[1252]

Indeed, both limits are mentioned and repeated in Locke's text separately when it comes to acquisition of property rights. I find an example where both limitations are clearly mentioned

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[1247] He adds that "Locke is saying that there is certainly no difficulty with unilateral acquisition (which satisfies the other provisos) in circumstances of plenty, but he is leaving open the possibility that some other basis might have to be found to regulate acquisition in circumstances of scarcity." See Waldron, (2005), 89.

[1248] Waldron, (1988), 211-218.

[1249] Sec. 31. "[K]eeping within the bounds, set by reason, of what might serve for his use; *there could be then little room for quarrels or contentions about property so established*" (emphasis added).
Sec. 36. "The measure of property nature has well set by the extent of men's labour and the conveniences of life: no man's labour could subdue, or appropriate all; *nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to intrench upon the right of another*, or acquire to himself a property, *to the prejudice of his neighbour*, who would still have room for as good, and as large a possession (after the other had taken out his) as before it was appropriated. *This measure did confine every man's possession to a very moderate proportion, and such as he might appropriate to himself, without injury to any body, in the first ages of the world, … I dare boldly affirm, that the same rule of propriety, (viz.) that every man should have as much as he could make use of, would hold still in the world, without straitening any body; since there is land enough in the world to suffice double the inhabitants, had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent)* larger possessions, and a right to them; which, how it has done, I shall by and by shew more at large." (emphasis added).
Sec. 39. "[W]e see how *labour could make men distinct titles to several parcels of it, for their private uses; wherein there could be no doubt of right, no room for quarrel"*. (emphasis added).
Sec. 51. "[H]ow labour could at first begin a title of property in the common things of nature, and how the spending it upon our uses bounded it. *So that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of.* This left no room for controversy about the title…." (emphasis added).

[1250] Simmons, (1992), Ch. 5.4.

[1251] Simmons, (1992), 288-298, citing Nozick, (1974), 175-176; Drury, (1982), 29; Lemos, (1978), 148; Lemos, (1975), 235 (raising the possibility that spoilage can be defined as "enough and as good").

[1252] See Simmons, (1992), Ch. 5.4. For Simmons, (1992) the opportunities for self-preservation and self-government are "*plausible candidate[s] for a natural moral limit on property, regardless of how inadequately Locke may have tempted to apply this limit in evaluations of his own society*." Simmons, (1992), Ch. 5.4., 294.

in the same paragraph. Locke notes, "Thus, at the beginning, Cain might take *as much ground as he could till, and make it his own land*, and yet *leave enough to Abel's sheep to feed on*; a few acres would serve for both their possessions" (Locke II, 38, emphasis added). As a result, both limits are necessary and work in harmony to avoid harm to others.

Simmons claims that even if the "*as enough and as good*" limit is a sufficient condition for appropriation in ancient time, it does not follow that there can be no natural limit on property.[1253] In fact, to Locke, without the separate applicability of the fair share limit, equal shares for individuals cannot be secured.

This limit is extremely important in guaranteeing no harm or prejudice to others (see Locke II 33, 36, 37); others must be free to exercise "rights of self-government and self-preservation." This limit "*requires that persons who cannot appropriate a share are not denied access to their share or room to exercise their rights of self-preservation and self-government.*"[1254] Simmons notes that with the "*as enough and as good*" limit, each person is guaranteed "the opportunity of a living—a condition of non dependence, in which one is free to better oneself, govern one's own existence, and enjoy the goods god provided for all" (emphasis added).[1255]

The separate importance of this limit in guaranteeing equal rights of self-government opposes Macpherson's contention. Other modern authors agree that the meaning of this limit is in guaranteeing self-government without depending on others.[1256] Macpherson also argues that Locke does not discuss what happens after the plenary of resources and instead simply assumes a continuing plenary of resources—thus providing the basis for capitalism.[1257] But Locke saw that men must accumulate more not necessarily for greed but for comfort and security: "the best advantage of *life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being*" (Locke II, 26, emphasis added, Locke II, 31).[1258] Simmons claims that Macpherson's argument fails to prove Locke was a capitalist.[1259] Locke specifically discusses the scarcity (Locke II, 36, 39, 51) of natural recourses, which is why he promoted the fair share limit—to restrict overuse in times of inadequate resources or after the creation of societies.[1260]

Locke discusses when plenary times end first by referencing Cain (see above) and then by noting that even during Abraham's time, it was men's consent that created boundaries of property in land:

> "*But when there was not room enough in the same place, for their herds to feed together, they by consent, as Abraham and Lot did, Gen. xiii. 5. separated and inlarged their pasture, where it best liked them.* And for the same reason Esau went from his father, and his brother, and planted in mount Seir, Gen. xxxvi." (Locke II, 38, emphasis added)

[1253] Thomson, (1976) and Waldron, (1979) claim that even in a world of scarcity, if no act of appropriation satisfies Locke's fair share limit, it does not mean that the limit is not a natural one. See Waldron, (1979), 325-326; Thomson, (1976), 666, cited in Simmons, (1992), 290.
[1254] Emphasis added. Simmons, (1992), Ch. 5.4, 293, 298. (See also Vaughn, (1980) for whom the emphasis must be on leaving "as enough and as good" of an opportunity to live. Vaughn, (1980), 107).
[1255] Simmons, (1992), 293.
[1256] Simmons, (1992), Ch. 5.4, 293 (citing Ryan, (1984), 17, 45-46 and; Vaughn, (1980), 107).
[1257] Macpherson, (1962), 221. See more on p. 125.
[1258] See p. 137.
[1259] Simmons, (1992), 288-298.
[1260] Simmons, (1992), 288-298.

Locke offers a solution to the scarcity of natural recourses through the natural law limits of no waste and leaving enough, requiring the amelioration of the land for future users (Locke II, 33). This implies that Locke intends this limit to apply after the creation of societies. And without this amelioration, the appropriator of land might lose it to others who would ameliorate it for the good of future users:

> "Nor was this appropriation of any parcel of land, *by improving it, any prejudice to any other man*, since there was still *enough, and as good left*; and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all. No body could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same." (Locke II 33, emphasis added)

The amelioration of the land or object of labour for a future similar use is an example of how to obey the "*as enough and as good*" limit: The community receives the same value. In fact, more value is added for future use. For Locke, leaving as enough and as good for others means not leaving less for others. If leaves as much as others can make use of, it is similar to taking "a good Draught" out of the river (Locke II, 33). Locke shows how to preserve this limitation with the help of the object's amelioration for future users.

The phrase "*as enough and as good*" is itself vague in quantitative and qualitative aspects. As argued by Spencer (1992), it is unclear whether the "*as enough and as good*" left should be of the same kind of appropriated object or something that is "as good as." He adds that it is further difficult to define "as good as" without a sound arbitrator.[1261] Simmons reads "enough" as "*enough for similar use*," which makes "perfect sense."[1262] Lemos (1982) and Ashcraft (1986) interpret "*as enough and as good*" as being the goods needed for preservation.[1263] But Locke clearly included comfort and convenience: "for the support and comfort of their being" (Locke II, 26, 31).[1264]

When should the "*as enough and as good*" be available?[1265] Cohen (1986) thinks that Locke's intention is for the appropriator to leave "*as enough and as good*" before the appropriation, not just during or after it.[1266] Locke's words support this: "to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for *as good, and as large a possession (after the other had taken out his) as before it was appropriated*" (Locke II, 36, emphasis added).

However, this context is a time before land became limited—the "*first ages of the world*, when men were more in danger to be lost by wandering from their company in the then vast wilderness of the earth than being straitened for want of room to plant (Locke II, 36, emphasis added). After land become limited due to the "increase of people and stock, with the use of money, *had made land scarce, and so of some value*" (Locke II, 45, emphasis added), it becomes impossible to leave "*as enough and as good*" of the common stock as before the appropriation. Thus, only the time of appropriation is relevant.

[1261] Simmons, (1992), Ch. 5.4 (citing Spencer, (1992), *Social Statistics*, Ch. 10, 126–128).
[1262] Simmons, (1992), Ch 5.4, 288–298.
[1263] Ashcraft, (1987), 131–33. See also Lemos, (1978), 148; Lemos, (1975), 235.
[1264] See p. 137.
[1265] Simmons, (1992), Ch. 5.4, 288–298, 295 (citing the full discussion in Steiner, (1981), 382; (1977), 45).
[1266] Cohen, (1986), *Self-ownership*, 124–125.

According to Simmons, Locke never specifically mentioned future generations as a consideration during a present appropriation. To Locke, "fairness" of acquisition is relative to when it happens.[1267] The time of occurrence is indeed important, but considering future commoners aligns with Locke's general intentions for the common good, common stock, and benefit of the whole (Locke II, 7).[1268] This is also in agreement with Schmidtz (1991), who argues that future generations are also included in Locke's definition of to whom the common is also given.[1269]

Regarding to whom "*as enough and as good*" is left, Locke notes that the preservation must be of all mankind, "as much as possible" (Locke II, 16) and "every person in it" (Locke II, 134). To Locke, "as much as may be, *all the members of the society* are to be preserved" (Locke II, 159, emphasis added. See also Locke II, 182).[1270]

I conclude that the requirement of this "*as enough and as good*" is for all mankind, "as much as possible" (Locke II, 16) at the time of appropriation. There is a certain quantitative and qualitative vagueness to this limit, but I join Simmons and Fressola in arguing that there will always be tremendous problems in defending what is enough and as good. Nonetheless, the fair share is a "theoretically clear limit on natural property rights."[1271]

For Locke, the '"*as enough and as good in common*" limitation is independently relevant even after societies were created. It is separate from the waste limit because the latter is a negative prohibition while the former is a positive obligation to preserve an object for a future similar use. The quantitative meaning remains vague, but it is a general limitation to prevent neglect.

The maintenance of an object or land and its amelioration for a future similar use can satisfy this fair share limit for others. An object should be used and not perish as well as preserved or maintained to guarantee an equal share for others. This is a positive action, and in the case of land, amelioration is important. All commoners should have be able to engage in a similar use of the same object or land, or that is impossible, they should be afforded an equal opportunity of self-government with a similar object or land.

5.2.2.1 Conclusions on both recognized limitations

The general agreement among most Locke interpretations is that property acquired via labour provides certain protected rights in an object or land. However, those rights are subject to at least two recognized natural law limitations so that the share of others is not harmed and property rights of others are respected: (1) the "no waste" limit and the (2) "as enough and as good" or fair share limit.

Both limitations are independently important to guarantee the common stock before and after society creation and to guarantee the long-term preservation of mankind. The purpose of both limitations is to guarantee that no others are harmed by the appropriation. The first is a prohibition related to the actual use of the object. No enclosed object should go to waste. The second is related to the way one uses the object. It is necessary to maintain and ameliorate a product of labour so that a similar future use is possible.

[1267] Simmons, (1992), Ch. 5.4, 297.
[1268] See p. 100.
[1269] Simmons, (1992), Ch. 5.4, 288-298 (citing Schmidt, (1991), 24).
[1270] See p. 110.
[1271] Simmons, (1992), Ch. 5.4, 295, 288-298.

Most authors see both limits as recognized natural law restrictions on property rights.[1272] Within the state of nature, even Macpherson recognizes that Locke uses both as natural law limitations.[1273] But he argues that both limits are rendered unnecessary with the creation of societies and private property because industrial productivity increases the common stock for all. Private property creates new opportunities to acquire independence and self-government. Those who cannot obtain land or limited property can achieve self-governance in a different way. So he argues that Locke removed those natural boundaries after the creation of societies.[1274]

Yet I argue that Locke recognized those limits and maintained their timeless validity. They are both in accordance with the purpose of natural law, which is to promote the safe and peaceful preservation of mankind (Locke II, 7, 8). Both limits function together and are consistent with Locke's focus on the equality of self-governance (Locke II, 4, 5, 6) and concern for the preservation of others above the self.[1275]

Simmons holds that both "can function together consistently" as Locke intended because both are consistent with the aim of the best preservation of mankind.[1276] Simmons also notes that the limits are valid in all times.[1277] For Simmons, the use of property must be consistent with natural law.[1278] Simmons adds that Locke sees natural law as an obligation of "corporeal rational creatures": "[W]hen we say that man is subject to law, we mean nothing by man but a corporeal rational creature[]; what the real essence or other qualities of that creature are in this case in no way considered."[1279]

Ashcraft (1986) claims it is the fulfilment of our natural law obligations that gives us the right of subsistence.[1280] Natural law limits are to be met so that the appropriation is justified. And Tully (1980) confirms the validity of both natural law limits. He cites Barbeyrac (1729) in that "[p]roperty is *conditional* upon its use to perform out *positive duties* to God."[1281] It is only with the help of those limits that Locke solves the problem of justifying appropriation of property from the common without the need for consent. However, for Tully, it is the "*as enough and as good*" limitation that is most important because if the earth is owned by all in common, private property can only be justified if no one is made worse off by the appropriation. Tully thinks that to Locke, as soon as land became scarce, property in land could only be legitimated by a system of law created by men and based on consent. However,

[1272] See Strauss, (1953), 239-240; Simmons, (1992), Ch. 5.4, 288-298; Drury, (1982), 32-34; Ryan, (1984), 17, 36; Reeve, (1986), 133; Snyder, (1986) , 739-740.
[1273] Macpherson, (1962), 199, 238, 239.
[1274] Macpherson, (1962), 199, 203-220, 231, 245. Even for Macpherson, (1962), the "*possessive market society*" condition justified by Locke was only met until the "*middle of the nineteenth century*" (Macpherson, (1962), 273). Today, due to the widening franchise and the rise of the industrial working class, this kind of Lockean society cannot be justified and must be transformed (Macpherson, (1962), 273-274).
[1275] See the purpose of natural law in Locke, p. 99, and his concern for others, p. 100.
[1276] Simmons, (1992), Ch. 5.4, 284.
[1277] Simmons, (1992), Ch. 5.4, 288-298, emphasis added.
[1278] Simmons, (1992), Ch. 5.4, 288-298. See also Ashcraft, (1986), 85-86.
[1279] Simmons, (1992), 24.
[1280] Ashcraft, (1986), 130.
[1281] Tully, (1980), 124, emphasis added, citing Barbeyrac, (1729), 4.4.3.

he insists that every right to property is always held conditional on a social duty or obligation for the preservation of mankind.[1282] The preservation of mankind justifies property regulations made by the political society to be applied collectively after having the consent of the people (Locke II, 50). Tully thus confirms that Locke's natural law limits guarantee the protection and preservation of mankind so none are harmed.[1283]

For Dunn (1984), the appropriation of land is conditioned on the limitations of reason. He claims Locke thought of humans as stewards, "obliged to make *good use of it*. It is not *simply theirs, to do with precisely as they fancy*. They are its stewards and must *display their stewardship in their industry* as well as in *their rationality. They may appropriate and consume nature.… But they have no right … to waste any of it*."[1284]

As a further modern indirect confirmation of the validity of natural law limitations, Pitkin argues that for Locke, the obligations to obey a government actually derive from the government's conformity to natural law limitations. This way, no individual is obliged by tacit consent to be ruled by a tyrannical government because the very basis of the validity of consent is firstly based on the conformity of the government to natural law limits: "[Y]ou are *obligated to obey* because of certain characteristics of the government – that it is *acting within the bounds of a trusteeship based on an original contract.*"[1285] For Pitkin, consent for Locke is not the sole basis of property rights because the true basis of a legitimate government is accordance with natural law. It is thus the quality of the government and its consistency with natural law that determines its validity— not consent.[1286] Simmons mentions another possible natural limit as mentioned by Locke that covers the obligation of charity, demanding a surplus, and comforting the helpless.[1287] Locke writes, "This equality of men by nature, … the *foundation of that obligation to mutual love amongst men, on which he builds the duties they owe one another*, and from whence he derives the *great maxims of justice and charity*" (Locke II, 5, emphasis added).[1288] But I do not consider the duty of charity to be a natural law limit. Locke simply relates equal respect for one another to the duty of justice.

Ultimately, both natural law limits are valid for they both independently preserve the share of others as well as the individual right to self-governance without depending on others. Both are timelessly and universally valid and will ever restrict appropriators in their use, directing it towards the benefit of others. The no spoilage limit avoids unnecessary waste of the common stock, and the sufficiency limit guarantees a proper use of the object so that a similar use can

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[1282] Tully, (1980), 98-99, 99-105, 158-160, 161, 164-165; Locke II, 30, 38, 45, 50. Tully thus supports both limits but within the state of nature. After the creation of societies the basis of property for Tully becomes consent and the preservation of mankind justifies Governments' property regulations inspired by the natural law limits.

[1283] A modern author, Christman, (1986), proposes an interesting view of Locke that holds that full ownership cannot be justified on the basis of natural rights alone. As such, those rights are always subject to some higher natural law limitations. In his words, "*[T]he 'property in' the object amounts to rights against expropriation and, therefore, rights to use, manage, possess, and have security in the object. But, … not what I have been calling full ownership of property which would include the right to accumulate, and gain income from property.*" He asserts that Locke would hold that full ownership rights are always subject to certain natural law limitations and revisions for the security of the common good. Christman, (1986), bases his main argument on the fact that whenever Locke refers to the right to "*enlarge possessions*," he refers to rights made possible by the introduction of money and no any other rights (Locke II, 54-57); Christman, (1986), *Locke's Second Treatise,* 133-145.

[1284] Dunn, (1984), 38, citing Locke, (1988), 290, emphasis added.

[1285] Pitkin, (1966), 46-52, emphasis added. For other confirmation of Locke's natural law limits, see p. 214.

[1286] See p. 48.

[1287] See also Simmons, (1992), Ch. 6.

[1288] See my analysis of charity on p. 114.

exist in the future. This guarantees the independence of each share or at least a similar use of the common stock. Without these complementary limitations, others would be harmed by the appropriation, risking mankind's preservation. The no waste limit is not "transcended" by the use of money. Money simply enlarges the ability to attain comfort and security. The limitation is valid for perishable goods.

The positive law today should reflect not only natural rights of individuals but also natural law obligations to respect the same rights of others so ensure a better preservation of the whole; this could make the purpose of natural law a reality (Locke II, 7, 8).

As an example of the no waste limit, if perishable goods useful for life wasting from non-use and are left to perish, the property in it can be transferred to those who claim a need for those perishable goods to survive. The "as enough and as good" limit is also to be reflected within positive law; whenever property is taken, it must be maintained for a future similar. Amelioration of land is required. This guarantees the independent self-government of others. The positive law should do more than simply protect property rights (as most propose to do); it should also enforce natural law obligations to respect the rights of others. For example, property arbitration committees could be convened to receive reports and evidence of waste or non-use of perishable goods or improper maintenance of property, thus protecting the preservation of the whole. Property rights could remain the same, but such committees could determine on a case-by-case basis whether the common stock is wasted or neglected. The committee could have the authority to transfer such property to an interested proprietor (who claim a need for those perishable goods to survive) and who could use it to meet the needs of self-preservation. The process would be similar for goods or land not properly maintained to guarantee future use. Many property lawyers and jurists would be required for such arbitration committees. Natural law limits would also have to be incorporated for educational purposes in all universities teaching property law as well as human rights; new case law would emerge incorporating situations in which men take responsibility for their property to best preserve the whole. Proprietors would have to become more responsible in their use of their property due to the obligation to other members of the community. This is only possible if the government respects the natural law for its protection of all individuals. Otherwise, the government could use its power to infringe upon property rights of individuals—as has occurred so frequently throughout history.

5.2.3 Additional restriction on land

When Locke refers to the appropriation of land, he demands special care for the preservation of land for future commoners. Locke's wording concerning land repeatedly refers to "*tilling*," "*ameliorating*," and "*improving*" the land for the "*common stock*." The appropriation of land is conditioned not only on the marking of boundaries—("inclose it from the Common" (Locke II, 32); "whatsoever he enclosed, and could feed, and make use of" (Locke II, 38))[1289]—but also on the continuing cultivation and maintenance or amelioration of the land so that others can enjoy a similar value in the land. Locke speaks of land as "the chief matter of Property" or

> "the Earth itself; as *that which takes in and carries with it all the rest, I think it is plain, that property in that* is given in the *same way with movables*; "But the *chief matter of property* being now not the fruits of the earth, and the beasts that subsist on it, but *the earth itself*; as *that which takes in and carries with it all the rest*; I think it is *plain, that property in that too is acquired as the former.* As much land as a man *tills, plants,*

[1289] To avoid repetition, see full analysis of Locke's boundary requirements on p. 156.

> *improves, cultivates, and can use the product of, so much is his property*. He *by his labour* does, as it were, *inclose it from the common.*" (Locke II, 32, emphasis added)

Labour could introduce an aspect of an owner's personality while adding value. In annexing something to the land, it becomes part of the property if it respects natural law limitations.

This is also mentioned later: "The same measures governed the possession of land too: whatsoever he tilled and reaped, laid up" (Locke II, 38). Locke specifically mentions the same natural law limit of "*as enough and as good*" in the appropriation of land. No harm is to be done to other men by leaving "*enough, and as good*"; Locke says that there must be no "*prejudice to any other man,* (in that there is) *still enough, and as good left*" (Locke II, 33, emphasis added). Locke explains that enjoyment of property rights in land is possible as long as "*enough and as good is left for others.*" These limits insure that no injury is caused to others. These natural law limitations are applicable to the appropriation of all other movables. Locke then demonstrates how to put into practice the "*as enough and as good*" limit when it comes to land: "*by improving it, any prejudice to any other man*, since there was still *enough, and as good left*; and more than others could use" (Locke II, 33, emphasis added). Improvement is required.

Locke then demonstrates that the limit of no waste is also applicable to land and its products:

> "The same measures governed the possession of land too: whatsoever he tilled and reaped, laid up and *made use of, before it spoiled, that was his peculiar right;* whatsoever he enclosed, *and could feed, and make use of, the cattle and product was also his. But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering, and laying up, this part of the earth, notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other*. (Locke II, 38, emphasis added)

Locke is clear that the enclosure of land is not enough. There must be an actual use of the land or its products before it or they spoil. If the grass is rotted, or the fruits rot due to non-consumption, in spite of enclosure and labour, this is a waste of the common share, and the products "might be the possession of any other" (Locke II, 38, emphasis added).

Both limits are mentioned together in the vignette involving Cain and Abel: "Cain might take as much ground as he could till, and make it his own land, and yet leave enough to Abel's sheep to feed on; a few acres would serve for both their possessions." (Locke II, 38, emphasis added).

Dunn (1984) claims that for Locke, appropriation of land is possible if limited by reason, and men become stewards, "obliged to make *good use of it.* It is not *simply theirs, to do with precisely as they fancy*. They are *its stewards* and must *display their stewardship in their industry* as well as in *their rationality*. They may appropriate and consume nature.... But they have *no right ... to waste any of it.*"[1290]

5.2.3.1 Locke's *Second Treatise* vocabulary regarding land appropriation

For appropriation via "labour," Locke specifically uses words referring to harder work than simply physical grabbing an object such as with movables (e.g., till, plant, improve, cultivate, reap, lay up, improve pasturage, subdue the earth). Both enclosure (the marking of

[1290] Dunn, (1984), 38.

boundaries) and the continuing cultivation for the good of the whole are required:

> "God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour. He that in obedience to this command of God, *subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.*" (Locke II, 32, emphasis added)

Labour here clearly means "*Tills, Plants, Improves, Cultivates*" (Locke II 32, emphasis added). Locke uses similar vocabulary again—"subdue, till, sow"—to demonstrate that in doing so, the proprietor adds value on the land. And "God and his Reason commanded him to [*subdue it*]" (Locke II, 32, emphasis added).

Locke speaks of "*improving it, any prejudice to any other man*, since there was still *enough, and as good left*" (Locke II, 33, emphasis added). He then uses phrases such as "*tilled and reaped, laid up*" (Locke II, 38, emphasis added). Locke says, "land that is left wholly to nature, that hath no *improvement* of *pasturage, tillage, or planting*, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing" (Locke II, 42, emphasis added). Land value is discussed in terms of "improvement," "pasturage," "tillage," or "planting."

Simmons (1992) defines Locke's labour on land as subduing, tilling, planting, improving, and reaping.[1291] He emphasises the examples in Locke regarding appropriation of land (see Locke II, 32, 33, 38, 42). Simmons notes that for Locke, the act of the enclosure of the land is necessary for the appropriation of the land (Locke II, 42).[1292] Marking boundaries also necessary for appropriation rights in land: He said to "inclose it from the Common" (Locke II, 32, emphasis added), and discusses "whatsoever he enclosed, and could feed, and make use of" (Locke II, 38, emphasis added).[1293]

Ashcraft (1986) recognizes that as with other movables, no waste of land or land products is allowed.[1294] Ashcraft (1986) further adds that the cultivation of the land thus is a good way to preserve property in the land: "Throughout the chapter on property, Locke insists that *those who cultivate the land contributes to the common good, while those who do not do so are wasteful landowners and, from the standpoint of society, useless individuals*" (emphasis added).[1295] Ashcraft supports my argument that for land appropriation Locke's vocabulary requires cultivation of the land for the common good. Ashcraft finds it difficult to understand how so few authors could see that Locke's theory of property is one of the most restricting theories of landowning. He writes, "Locke's chapter on property *is one of the most radical critiques of the landowning aristocracy produced during the last half of the seventeenth century*"; "Locke makes this point clear when he notes that it is *not 'the largeness of his possession in land, but rather the allowing of it or its products to perish' uselessly'* to be the critical standard to be applied to landlords and land ownership." (emphasis added) [1296] I was thus relived to discover that Ashcraft too finds it shameful that "*this aspect of Locke's argument has been little noticed. Much more attention has been paid to Locke's recognition of the fact that the laboring class lives from hand to mouth, an observation that is often cited*

[1291] Simmons, (1992), Ch. 6.1.
[1292] Simmons, (1992), Ch. 6.1.
[1293] To avoid repetition, see full analysis of Locke's boundaries requirement on p. 156.
[1294] See Ashcraft, (1986), 267. For a detailed discussion, see Ashcraft, (1986), 296-297, 227-228.
[1295] Ashcraft, (1986), 271.
[1296] Ashcraft, (1986), 273.

as though it represented a derogatory judgment on Locke's part." (emphasis added) [1297]

Ashcraft's conclusions support my argument for the need to reflect natural law limits in the positive law of property today because they are still valid.[1298] Tully (1980) offers indirect support. "If the *products of the improved field are not use*d in the sense of being collected for the sake of use for support and comfort, then the cultivated land ceases to be one's own and reverts to the common" (emphasis added).[1299] Tully also agrees that Locke specifically requires land improvement: "*improved field*."[1300]

5.2.3.2 Labour on land increases the common stock

Locke also supports property rights in land by explaining that labour, or the cultivation of the land, is supremely important and necessary to add value and increase the common stock:

> "[H]e who appropriates land to himself by his labour *does not lessen but increase the common stock of mankind.* For the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are (to speak much within compass) *ten times more* than those which are yielded by an acre of land of equal richness lying waste in common. And therefore he that encloses land, and has a greater plenty of the conveniences of life from ten acres than he could have from a hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of a hundred lying in common…." (Locke II, 37, emphasis added)

For Locke, amelioration or labour to increase the common stock of mankind adds value.

> "Nor is it so strange, as perhaps before consideration it may appear, that the property of labour should be able to over-balance the community of land: for it is *labour indeed that puts the difference of value on every thing;* and let any one consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common, without any husbandry upon it, and he will find, that the *improvement of labour makes the far greater part of the value*. I think it will be but a very *modest computation to say, that of the products of the earth useful to the life of man nine tenths are the effects of labour: nay, if we will rightly estimate things as they come to our use, and cast up the several expenses about them, what in them is purely owing to nature, and what to labour, we shall find, that in most of them ninety-nine hundredths are wholly to be put on the account of labour*." (Locke II, 40, emphasis added)

This is important in that Locke explains that it is labour or amelioration that gives the most value to the appropriated land and its products (Locke II, 42). Land that is left without any work of men for its amelioration can be considered a waste: "*[L]and that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste*; and we shall find the benefit of it amount to little more than nothing" (Locke II, 42,

[1297] Ashcraft, (1986), 268.
[1298] Ashcraft, (1986) concludes that the government should employ the use of land in securing the honest industry of mankind: "*[T]hat the increase of lands, and the right employing of them, is the great art of government: and that prince, who shall be so wise and godlike, as by established laws of liberty to secure protection and encouragement to the honest industry of mankind, against the oppression of power and narrowness of party,* will quickly be too hard for his neighbours" (emphasis added). Ashcraft, (1986), 274.
[1299] Tully, (1980), 123-124.
[1300] Ibid.

emphasis added). So land that does not increase the value of the common stock is wasteful. Furthermore,

> "It is *labour then which puts the greatest part of value upon land, without which it would scarcely be worth any thing*: it is to that we owe the greatest part of all its useful products; for all that the straw, bran, bread, of that acre of wheat, is more worth than the product of an acre of as good land, which lies waste, is all the effect of labour: for it is not barely the plough-man's pains, the reaper's and thresher's toil, and the baker's sweat, is to be counted into the bread we eat." (Locke II, 43, emphasis added).

Locke also provides examples of how labour adds value to the land's products:

> "the *labour of those who broke the oxen, who digged and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils,* which are a vast number, requisite to this corn, from its being feed to be sown to its being made bread, *must all be charged on the account of labour, and received as an effect of that: nature and the earth furnished only the almost worthless materials, as in themselves.*" (Locke II, 43, emphasis added).

So nature in itself is "almost worthless" unless we add the value of labour to it.

For the appropriation in land as with movables (Locke II, 42), labour gives the greatest value. When it comes to land appropriation, Locke includes the continuing amelioration and cultivation of the land for the common stock.[1301] Ashcraft (1986) adds that the cultivation of the land is a good way to preserve property in the land because it demonstrates a reflection of the common stock. "Throughout the chapter on property, Locke insists that *those who cultivate the land contributes to the common good, while those who do not do so are wasteful landowners and, from the standpoint of society, useless individuals.*"(emphasis added)[1302]

5.2.3.3 Labour as the greatest value to land in Genesis

Locke used the book of Genesis as a source of property law. Locke considers the original grant of God to mankind cited in Genesis, ch 1. Sec: 28, 29, 30, and ch 9: Sec 2 as the foundation of the property right doctrine. Locke specifically cites Genesis in the *Second Treatise* (25, 31) and the *First Treatise* (41, 86).[1303]

In the Book of Genesis, land had no value without the labour of man. Locke says God gave the authority for the appropriation of land (Locke II, 35): "God, by commanding to *subdue*, gave authority so far to appropriate: and the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions" (Locke II, 35). Locke explains that the meaning of "subdue" to be the improvement of the land for the benefit of life:

> "*God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour*. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him." (Locke II, 32, emphasis added).

[1301] As additional evidence of the special status of land, see p. 155 and following.
[1302] Ashcraft, (1986), 271.
[1303] For Locke's references relating to the Genesis, see p. 146.

So the purpose of man was to "*subdue*" God's creation: "And God blessed them; and God said unto them: 'Be fruitful, and multiply, and replenish *the earth, and subdue it*…'" (Genesis, *Book of creation*, Ch 1, Sec. 28).[1304]

As seen above, Locke interprets the word "subdue" as *improve it for the benefit of life*" (Locke II, 32, emphasis added). The Genesis confirms Locke's interpretation of the word "subdue" as ameliorating it for the benefit of life. Men are instructed to dress and keep the land. The purpose of men given land is ; "*to dress it* and *to keep it."*[1305](Genesis, *Book of creation*, ch 2. Sec 15, emphasis added).

טוַיִּקַּח יְהוָה אֱלֹהִים, אֶת-הָאָדָם; וַיַּנִּחֵהוּ בְּגַן-עֵדֶן, לְעָבְדָהּ וּלְשָׁמְרָהּ.

15 "And the LORD God took the man, and put him into the garden of Eden to *dress it and to keep it*."[1306]

God saw no purpose to growing vegetation until the creation of man because there was no man to labour and "*till the ground*": "*No shrub of the field was yet in the earth, and no herb of the field had yet sprung up;* for the LORD God had not caused it to rain upon the earth, and there *was not a man to till the ground*" (emphasis added).[1307]

I find this to be in accordance with Locke's notion that man must work and cultivate the land for the benefit of the whole to have any kind of property right. God demonstrates a clear desire for man to "till" the "ground" for his enjoyment. God's curse of the ground links the identities of humankind and nature; humans have only themselves to blame for their hostile nature: "Therefore the LORD God sent him forth from the garden of Eden, *to till the ground from whence he was taken.*" (Genesis, *Book of creation*, ch 3. Sec. 23, emphasis added)[1308]

Under God's curse it is noted that humans are to cultivate and till the land: "In the sweat of thy face shalt thou eat bread, *till thou return unto the ground; for out of it wast thou taken; for dust thou art, and unto dust shalt thou return*" (emphasis added, Genesis, *Book of Creation*, ch 3. Sec 19)[1309]. Further, God seems to remind mankind that they came from the ground and shall return to it. The ground came first (Genesis, *Book of Creation*, ch 2, Sec 6) before men (Genesis, *Book of Creation*, ch 2, Sec 7). Men are to preserve it, cultivate it, and make the best of it, for the best for the common good, including animal life[1310].

[1304] Genesis, *Bk. of creation*, Ch. 1 Sec. 28. To avoid repetition see in Hebrew p. 252.

[1305] God reveals his intentions for man in the second story of creation; see below for more details.

[1306] Genesis, *Bk. of creation*, Ch. 2. Sec 15, emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1307] Emphasis added. Genesis, *Bk. of creation*, Ch. 2. Sec. 5. See p. 146. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1308] Genesis, *Bk. of creation* , Ch. 3. Sec. 23:

כג וַיְשַׁלְּחֵהוּ יְהוָה אֱלֹהִים, מִגַּן-עֵדֶן--לַעֲבֹד, אֶת-הָאֲדָמָה, אֲשֶׁר לֻקַּח, מִשָּׁם.

23 Therefore the LORD God sent him forth from the garden of Eden, to *till the ground from whence he was taken*.

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1309] Genesis, *Bk. of Creation* , Ch. 3. Sec 19:

יט בְּזֵעַת אַפֶּיךָ, תֹּאכַל לֶחֶם, עַד שׁוּבְךָ אֶל-הָאֲדָמָה, כִּי מִמֶּנָּה לֻקָּחְתָּ: כִּי-עָפָר אַתָּה, וְאֶל-עָפָר תָּשׁוּב.

19 In the *sweat of thy face shalt thou eat bread*, till thou return unto the ground; for out of it wast thou taken; for dust thou art, and unto dust shalt thou return.'

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1310] Genesis, *Bk. of Creation*, Ch. 2, Sec. 6 & 7:

Locke's use of the book of Genesis as a source confirms his urge to till, subdue, dress, and keep the land for the benefit of life. Locke prescribes the same natural law limitations for land as for movables. However, he emphasises that for land, labour is not just taking possession of the land and enclosing it. To Locke, labour is more demanding: continuing improvement and cultivation of the land for the "benefit of life" and/or "common stock." "As much Land as a Man Tills, Plants, *Improves, Cultivates*" (Locke II, 32, emphasis added. See also Locke II, 31, 33, 37, 38, 40, 42).[1311]

5.2.3.4 Against Tully's interpretation

Tully (1980) interpreted Locke's property rights in land in a distinctive way. He claims that for Locke, "*fixed property in land does not have a natural foundation.*"[1312] This is an interesting debate; Price (2004) notes that "[r]ight to ownership of land based on use is also a growing matter of debate in poor and developing countries, where most of the land is owned by a small wealthy class, but goes unused while millions of people have no place to live."[1313]

According to Tully, property rights can only be attributed to the products of the land deriving from its cultivation and not to the land itself; there is "*no right in land* … but only a *use right of its products.*"[1314]

> "If the *products of the improved field are not used* in the sense of being collected for the sake of use for support and comfort, then the cultivated land ceases to be one's own and reverts to the common. There is, therefore, no right in land as such, but *only a use right in improved land conditional upon the use of its products.* The right in land is twice removed from fixed property. It exists only in the land as long as it is being used, and only if the products are being utilized. The primary and determining criterion for any exclusive right is the due use of the direct means of production." (emphasis added)[1315]

Tully partially supports my argument on Locke's vocabulary because he agrees that Locke specifically asks for the land to be improved. However, I cannot agree with Tully's argument that legitimate rights to land can only be attributed to the products of the land deriving from its cultivation and not to the land itself. Locke does not support unlimited private property rights in land (Locke II, 32, 38). Locke uses a different language to demonstrate that property rights in land are limited to its amelioration for the good of the common stock. Tully calls those rights use rights that are conditioned on the amelioration of the land together with the "as enough and as good" left for others. However, saying that there are no property rights in the laboured land at all is going too far and ignores Locke's words. Locke specifically allows property rights in land even if conditioned on natural law limits.

ו וְאֵד, יַעֲלֶה מִן-הָאָרֶץ, וְהִשְׁקָה, אֶת-כָּל-פְּנֵי הָאֲדָמָה.

6 but there went up a mist *from the earth*, and watered the whole face of the ground.

ז וַיִּיצֶר יְהוָה אֱלֹהִים אֶת-הָאָדָם, עָפָר מִן-הָאֲדָמָה, וַיִּפַּח בְּאַפָּיו, נִשְׁמַת חַיִּים; וַיְהִי הָאָדָם, לְנֶפֶשׁ חַיָּה.

7 Then the LORD *God formed man of the dust of the ground*, and breathed into his nostrils the breath of life; and man became a living soul.

Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1311] As demonstrated above.

[1312] Tully, (1980), 122, 123-124, 146, emphasis added.

[1313] Price, (2004), 3 (find in bibliography under internet sites).

[1314] Tully, (1980), 122-123, emphasis added.

[1315] Tully, (1980), 123-124.

Tully explains that to Locke, no one can abuse or transfer rights in land in common: It "is a right possessed by all men, not just Adam. It is a right of use only, not of use, abuse and alienation . . . [T]he right expresses common property, not private property."[1316] Tully (1980) examines Locke's predecessors and concludes that for Grotius and Pufendorf, unlimited property rights in land can only be conventional, and any other property right in land before societal creation and consent is only based on use rights of the common:

> "*[F]or Grotius and Pufendorf it is conventional*, but since it precedes the constitution of a polity, the sovereign has a duty to protect it. According to Locke's arguments, if men agreed to private property in land it would be *purely conventional* and it would be justified only if it were a prudential means of bringing about a *just distribution of property in accordance with the natural right to the product of one's labour* and the three claim rights. If it did not conduce to this end it would lose its justification and would have to be abolished, either by legislation, or failing that, by revolution. *Locke might have thought some private property in land was justifiable according to his theory, but he did not say so.*" (emphasis added)[1317]

For Tully, Locke seems to follow Grotius and Pufendorf in that property rights in land are purely conventional and justifiable only as to the land products under a just distribution.[1318]

I demonstrate throughout this thesis that Locke follows Grotius on many issues under the state of nature, yet I argue that Grotius, unlike Pufendorf, allows certain limited property rights in the common based on seizure.[1319] Locke is distinct here from Grotius and Pufendorf. This is actually Locke's "great difficulty" (Locke II, 25) in how to grant property rights from the common; he resolves it with the help of his labour theory. Tully reminds Simmons of this when Simmons argues that it does not matter if the original community is positive or negative.[1320] Simmons (1992) argues that even if it is a negative community, appropriation would not require consent. He further explains that no one could argue harm if he or she has no claim on the property.[1321] On this rare occasion, I disagree with Simmons and concur with Tully (1980) that it is important to demonstrate that it is a positive community; if it were a negative community, there would have been no "great difficulty" to solve in the first place.[1322] Tully is clear on Locke solving this difficulty with the help of his labour theory, but it is often "ignored by interpreters who consequently read and misinterpret sections of the chapter in isolation."[1323] Tully's view leaves me perplexed when it comes to land rights. He confirms that unlike Grotius and Pufendorf, Locke's labour theory solves the "great difficulty" of how everyone can maintain separate rights in property even though all property is given in common (Locke II, 25). He even says this is ignored by many authors who interpret Locke. On the other hand, he argues that even with Locke's labour theory, there are no property rights in land because Locke follows Grotius and Pufendorf. This is inconsistent. If Tully claims that labour solves property rights as to movables, then why would it not be the case for

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[1316] Tully, (1980), 61.
[1317] Tully, (1980), 168.
[1318] As previously demonstrated, I confirm that for Grotius and Pufendorf, property rights deriving from the creation of society are conventional and based on consent (p. 44). See also Grotius's rights from the common (p. 151).
[1319] See Grotius's right of seizure, p. 151. Grotius and Pufendorf also recognize property rights in land from the common see p. 157, footnote No. 851. Pufendorf also requires 'cultivation' of the land.
[1320] See the discussion of the positive and negative community in Tully v. Simmons, p. 131, as well as the discussion of Locke's great difficulty (p. 140).
[1321] Simmons, (1992), 241.
[1322] Tully, (1980), 80-98; Tully, (1995), 111.
[1323] Locke II, 39, 51; see Tully, (1995), 109.

land if Locke mentions it? Tully could be interpreted as saying that there are no property rights at all when it comes to movable objects or land.

Driven to the same conclusion in a different way, I use Simmons (1992) as support. He argues that Tully's view is largely based on Locke's no waste limit concerning land, saying that improved land that is no longer used must revert to the common, and old and well established Roman law and natural law idea. This is how Locke makes property "*conditional upon its use to perform our positive duties.*"[1324] I agree with Tully that property is conditioned on our positive obligations, yet I join Simmons in holding that not only the property rights in land but every other property right is protected by this limit of no waste for the benefit of the preservation of mankind. This is a general limit that applies to all sorts of property. I thus agree with Simmons that if Tully takes this natural law limit from property rights in land, he might as well take it from all property, which cannot be valid.[1325] Tully seems not to find any Lockean justification for a natural foundation of fixed property in land and claims there is no evidence in Locke's text that land can be considered private property.[1326] But Locke clearly supports property rights in land. Locke says property rights in land are given in the same manner as property in movables: It is "*plain, that property in that too is acquired as the former*" (Locke II, 32, emphasis added) and "[t]he same measures governed the possession of land too: whatsoever he tilled and reaped, laid up" (Locke II, 38). However, Locke's definition of labour when it comes to land includes it amelioration for the common stock (Locke II, 32, 33, 37, 38, 42). This opposes Tully's (1980) view that Locke gives no property rights in land at all.

> "But the *chief matter of property* being now *not the fruits of the earth*, and the beasts that subsist on it, *but the earth itself*; as that *which takes in and carries with it all the rest*; ***I think it is plain, that property in that too is acquired as the former*** *As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property.* He by his labour does, as it were, inclose it from the common." (Locke II, 32, emphasis added).

Here, Locke clearly says that appropriation in land is acquired as with movables while adding that labour is interpreted in such a way that amelioration is necessary together with enclosure. Locke does not refer only to the product of the earth but to the property rights within the land itself. Those rights are limited but they are still given to the appropriator as a reward for the value added to the land and its transformation from waste to something useful for life and its preservation.

In another clear Lockean reference demonstrating support for land appropriation, "The *same measures governed the possession of land too: whatsoever* he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed, and make use of, the cattle and product was also his" (Locke II, 38, emphasis added). Locke finds property rights in land possible just as they exist for movable objects.

> "*[H]e who appropriates land to himself by his labour does not lessen but increase the common stock of mankind*. For the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are (to speak much within compass) ten times more than those which are yielded by an acre of land of equal richness lying waste in common." (Locke II 37, emphasis added).

[1324] Simmons, (1992), Ch. 6.1. citing Tully, (1980), 124.
[1325] Simmons, (1992), Ch. 6.1.
[1326] Tully, (1980), 123-124, 129-30, 147-151.

To Locke, it is clear that property in land can be appropriated by those who cultivate it and enclose it. I argue that labour also confers property rights, and to Locke, the appropriators contribute the greatest value to the land, help the common stock and, support life (Locke II, 40, 42, 43).[1327]

Simmons (1992) strongly objects to Tully and says that Locke clearly mentions property rights in land.[1328] Simmons explains that the argument of Locke II, 117 concerning dismemberment of territories of the commonwealth can only be understood if property rights mean rights in land as anything else is irrelevant. The specific conditions of inheritance Locke mentions in II, 116–117 are annexed "*to the land*" (Locke II, 116, emphasis added) or to the "enjoyment" or "possession" of the land (Locke II, 73), not to any rights of property in general. Further, Simmons adds that when Locke speaks of uniting or submitting our possessions (Locke II, 120), this only makes sense if rights of ownership refer to land, as indicated by Locke's texts.[1329]

Tully then explains the historical context of Locke's time, when landowners legally tried to enclose an area and cut off resources from the common without consent. Tully finds it difficult to believe that Locke wanted to exclude everyone from the use of the land with unlimited accumulation.[1330] However, to Tully, after the introduction of money and political society, all rights in land became exclusive rights;[1331] yet he insists that within the state of nature, land rights are a mere right of use. He emphasises that civil law must be directed "in accordance to natural ends so that all individuals are preserved in the best way possible to flourish as rational beings."[1332]

Tully is perhaps partly right in that after the creation of societies, land rights became based on consent, and eventually, the government must respect natural law. But as mentioned earlier regarding natural law limits, [1333]those conventional rights continued to be restricted by natural law limits that are superior and eternal (Locke II, 135, 12, 124).[1334]

Hartogh (1990) argues that Tully is confusing in that he does not exclude exclusive land property rights in a civil society. He finds it difficult to establish that people have exclusive rights in land in civil societies if people never had those rights of property in the state of nature. He bases his argument on Locke's contention that no one can give more power than he or she possesses.[1335] Hartogh further states that "if Tully's theory is correct the inference would be that there can be no legitimate property in land, even in the English common. For him, this interpretation is in contrast to Locke's own texts whereby Locke recognizes the individual right to alienate" (Locke II, 116, 120, 121, suggesting the continuation of the state

[1327] See references to the greatest value in land deriving from labour on p. 236.
[1328] Simmons, (1992), Ch. 4.5 and 5.1, citing Locke II, 116, 117, 120. In the chapter on limitations, I again used many of the references mentioned in Simmons, (1992) as well as other modern interpreters of Locke.
[1329] Locke refers to land, "*for it would be a direct contradiction for anyone to enter into society…and yet suppose his land…should be exempt from the jurisdiction of the government*" (Locke II, 120). This is also where "*the government has a direct jurisdiction only over the land*" (Locke II, 121, lines 1-4).
[1330] Tully, (1980), 153-154; Locke II, 45, 50.
[1331] This interpretation is also confirmed by Macpherson, (1962), 256; Dunn, (1967), 140-141; Seliger, (1968), 157-159, 172-179; Olivecron, (1974), "*Locke's Theory of Appropriation*," 230-31; Drury, (1982), 30, 36.
[1332] Tully, (1980), 153-154.
[1333] See p. 210.
[1334] See p. 29.
[1335] Hartogh, (1990), 664 citing Locke II, 23-4, 135,149, 168, 172.

of nature) and the common right to alienate (Locke II, 136).[1336]

As support for Tully's line of thought, Shrader-Frechette (1993) proposes that Locke does not suggest ownership rights in land as the land does not come from human labour. "*[I]ts Labour indeed that puts the difference of value on everything*" (Locke II, 40, emphasis added).[1337] Land was created by God and not men.

> "[O]f the Products of the Earth useful to the Life of Man 9/10 are the effects of labour; nay, if we will rightly estimate things as they come to our use, and cast up the several Expenses about them, what in them is purely owing to Nature, and what to labor, we shall find, that in *most of them 9/100 are wholly to be put on the account of labour*." (Locke II, 40, emphasis added)

Shrader-Frechette thus infers that if it is labour that creates value but not land, then we cannot put value on that land—only its products.[1338] Not produced by labour, land cannot become private property in the full ownership sense. But this could lead to the confusing conclusion that there are no natural property rights in land at all—only conventional rights. Tully and other modern interprets reach this same conclusion.[1339] I partly agree that to Locke, there are no unlimited private property rights in land. I join Tully and Shrader-Frechette in that those rights are conditional on the amelioration of the land together with the rest of the natural law limits. But saying there are no property rights in the laboured land is clearly contrary to Locke's own words, which sought to base property rights in land and protect them by natural law, if the limits are observed.[1340]

Defending his position in 1980, Tully (1995) later declares that he still cannot find any natural justification for private property in land. The only right he recognizes in Locke's reading is an alienable property right in an improved or cultivated land achieved by mixing labor of cultivation with the land.[1341] He further states that all the new information since 1980 as to

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[1336] Hartogh, (1990), 664.

[1337] Shrader-Frechette, (1993), 215.

[1338] Shrader-Frechette, (1993), 215. She also confirms that there are sufficient indications in Locke's texts demonstrating that Locke's limits on appropriation derive from the law of nature as in the case of land. She writes, "Locke's text provides arguments for adherence to a law of nature that exists both before and after the state of nature. His words also support a notion of community both in the state of nature and in civil society. The law of nature and the bounds of community that it includes (e.g., human freedom, equality, and a right to preservation) function as limits on the accumulation of property, including land. To argue that Locke sanctions unlimited accumulation without concern for the needs of other persons, thus *denies what is explicit in Locke*. He claims that "the end of government is the *preservation of all"* (Locke II, 159, emphasis added). "[T]he *Law of Nature* stands as an *Eternal Rule*. To argue that Locke sanctions unlimited accumulation is also to deny what is implicit (the original community) in his general theoretical framework*"* (Shrader- Frechette, (1993), 212).

[1339]See, for example, Proudhon, (1898): "[P]roperty is the daughter of labour!. . . we want to know by what right man has appropriated wealth which he did not create, and which Nature gave to him gratuitously ... the creator of the land does not sell it; he gives it; and, in giving it, he is no respector or persons. Why, then, are some of his children regarded as legitimate, while others are treated as bastards." Proudhon, (1898), 103-104. See also Becker, Beitz, (1980), Ch. 4, 487-502.

[1340] See Locke II, 32, in which Locke clearly states that appropriation in land is acquired as with movables. As such, property in it can be acquired. See also Locke II, 37: Locke is clear that property in land can be given to those who cultivate and enclose it. A value was added that helps support life. See also Sec 38, in which possession of land uses the same measure as movables but is stricter. Moreover, for Locke land in itself has not much value without the labour for its improvement so this argument is not valid (p. 236-237).

[1341] Tully, (1995), 118.

waste and Locke's textual support for improvement justifies this conclusion.[1342] Tully thus confirms again that to Locke, there is no "*fixed property in the ground*" until the formation of political societies and the settling of properties "*by consent.*" Tully demonstrates that Locke's model of property is the English common: "The only form of property in land which he endorses in the Two Treatises is the English Common."[1343]

5.2.3.5 Conclusions

Tully posits that for Locke, an individual could possess a specific limited use right in land until the creation of society, when the basis of property rights becomes consent. But Locke's own words suggest a natural basis for property rights in land. There are contradictions in Tully's arguments based on his use of Grotius and Pufendorf and purely conventional rights in land while elsewhere he argues that Locke resolves the "great difficulty" in property rights from the common using his labour theory. Tully's theory is also confusing based on the waste limit, which is also valid for movables. Conferring exclusive property rights after the creation of societies while the state of nature allowed only use rights is a problem if one cannot confer more than what he already possesses. There are many arguments against Tully, and it is clear that for Locke, natural rights in land exist (Locke II, 32, 38). Simmons's assessment of Locke makes no sense without Locke's intention to confer property rights in land. Labour confers those property rights as it creates the greatest value for the common stock (Locke II, 37, 40, 42, 43). Natural rights in land, even if limited, are valid, even within Locke's state of nature.

Locke's *Second Treatise* uses a specific vocabulary to distinguish labour regarding the appropriation of land: It involves amelioration and cultivation of the land for common use (Locke II, 32, 33, 38, 42).[1344] If reflected in the positive law, this could help correct the depletion of natural resources; many private owners destroy all natural resources on their land for pure self-profit. Locke, the one on whom our basic understanding of property law is built[1345] and who was a great impetus for multiple revolutions fought to protect natural law human rights,[1346] clearly asserts that property rights come with clear natural law obligations. A continuing cultivation and amelioration of the land for the benefit of the common stock, no waste, and "as good and as enough" are all natural law limits that have never been reflected in the positive law.

Because the positive common law of property is based on Locke's natural right to property,[1347] we must consider the importance of the preservation of the whole[1348] in the long run via implementation of natural law obligations to respect the rights of others and the common. To Locke, the long-term preservation of the whole, the purpose of natural law (Locke II, 7, 8), can only exist with correlating obligations to respect similar rights in property. Correcting this in the positive law of property would put men in a responsible position in terms of the common good, above selfish interests. No one would be harmed by the appropriation, and the common stock would be preserved—which was the intention of Locke.[1349] This does not mean the end of capitalism. Locke allows property rights in objects

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[1342] Mentioned in Ashcraft, (1987), 81-151. For a good review of this literature, see Tully, (1993), 71-95.
[1343] Tully, (1980), 124, 129, 135.
[1344] See references relating to Locke's vocabulary on p. 234.
[1345] See introduction to Locke's contribution to current property law on p. 6.
[1346] Ibid.
[1347] Ibid.
[1348] See the importance of the preservation of the whole on p. 100.
[1349] See the "no harm to others" section on p. 123.

and land as well. Locke supported unlimited accumulation based on labour for "largeness of possession" (Locke II, 46). Locke's limitations on land only preserve natural resources from abuse and waste for the better preservation of the whole. Both rights and obligations are to be incorporated and respected to preserve the common good per natural law (Locke II, 7, 8).

As demonstrated in the introduction, the state of our natural resources signal the transgression of natural law limits for far too long. There are not enough resources for all due to conflicting interests for profit and power. The time has come to take Locke's words seriously, not only as to our natural property rights but also as to the corresponding obligations, and become responsible for our surroundings.

Making natural law the basis of the positive law of property would help solve this problem. It would lead to a rapid change in the treatment of natural resources. This would entail radical changes in the law of property. All actions on the property and with its products would have to respect the good of the common stock. Waste or disuse would not be allowed. Regular maintenance of the "enough and as good" for the common as well as continuing cultivation and amelioration of the land would be required. This could be regulated by private governmental arbitration committees deciding on cases of negligence in the amelioration of land for future use. Sufficient evidence of waste or improper maintenance/ amelioration could lead to a transfer to the complainant to use for life preservation. Such committees would have to strictly observe natural moral law in protecting the rights of the individuals as well as the common resources while avoiding an abuse of power.

5.2.4 A further limitation on the possession of animal life

Living creatures (in possession)—no right to destroy unless for a noble cause. Being all created by the same Creator, no one can destroy self, others, or any living creatures in his or her possession unless for a "nobler" cause than its own existence—"some nobler use than its bare preservation" (Locke II, 6). Preservation and existence of other living organisms, such as animals, have recognized value. For Locke, even if living organisms are considered property, the proprietor, having the rational capacity to see past mere self-profit for the good of the animal, must care for the existence and preservation of the living organisms in his or her possession. No living organism in possession may be killed for self-interest alone unless for a noble cause. In this thesis, I suggest that such nobility refers to the guidance of reason and natural law limits for the good of the whole.

To start to understand this limit of the preservation of any life form in our possession, one must understand that to Locke, there is a duty to preserve self and never to abandon or destroy the self. Further, if not in competition, we must also preserve the rest of mankind:

> "[T]hough man in that state have an uncontroulable liberty to dispose of his person or possessions, yet *he has not liberty to destroy himself*,…. sharing all in one community of nature, there cannot be supposed *any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, … Every one, as he is bound to preserve himself, and not to quit his station wilfully*, so by the like reason, when his own preservation comes *not in competition*, ought he, as much as he can, to *preserve the rest of mankind.*" (Locke II, 6, emphasis added)

Locke says that with our guaranteed liberty to have rights as to our person as well as to the products of our labour (under the limits of natural law), we are not at liberty to commit suicide. We are obliged not to neglect our preservation. If there is no conflict with our own preservation, we are also obligated to preserve, as much as possible, the rest of our kind.

Locke explains this as follows:

> "[F]or *men being all the workmanship of one omnipotent*, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they *are his property, whose workmanship they are, made to last during his, not one another's pleasure*: and being *furnished with like faculties, sharing all in one community of nature.*" (Locke II, 6, emphasis added)

Locke proposes two duties. A creator gave us life. Our lives are his property and not ours to neglect or destroy. Locke explains the same via the use of reason independent of God's existence. He says that we all share similar faculties and capacities in the one community of nature, and as such, we must preserve not only ourselves but (when possible) also others of our kind as well as the community of nature. Locke further insists that no one can destroy the life of another or authorize such an act:

> "[I]t being out of a man's power so to submit himself to another, as to give him a liberty to destroy him; God and nature never allowing a man so to abandon himself, as to neglect his own preservation: and *since he cannot take away his own life, neither can he give another power to take it.*" (Locke II, 168, emphasis added)

Nature obliges men never to abandon self-preservation. We cannot neglect our own preservation nor take our own life. Because we are unable to take our own lives, we cannot give another the authority to kill us. Locke says, "No man . . . [has] a power to deliver up [his] preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another" (Locke II 149; II, 135, emphasis added). To Locke, it is important that no man can take his life or authorize another to take it for him; it is his own duty to preserve it. Locke does not stop with self-preservation. He also requires men to be responsible for the preservation of all life forms within his/her possession.

Locke unmistakably mentions a duty not to destroy any creature wantonly, unless for some "*some nobler use than its bare preservation*" (Locke II, 6, emphasis added). The basis of this duty is that all creatures, including men, were created by the same God—not by man. Thus, none can be destroyed for pleasure or selfish desires (Locke II 6). Further, those life form also share the same community of nature as man; "he has *not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it"...* (Locke II, 6, emphasis added)

For Locke, we are all created by the same "maker" for the purpose of preservation of ourselves and others, based on possibility. Men have the moral restriction to preserve any living organism in their possession. The exception is only for a nobler cause than the animals' existence.

To Locke, all living creatures, not just men, have intrinsic value. One cannot treat any creature as one pleases for pleasure or destroy it because it is "*made to last during his, not one another's pleasure*" (Locke II, 6). The rare exception must be for a noble, moral reason, having more value than the creature's own preservation or existence. Locke also mentions that it is not only other that should not be destroyed, but all creation, for "nothing was made by God for man to spoil or destroy" (Locke II, 31).[1350]

Among the few interpreters commenting on this natural limit of Locke, Ewins (2004)

[1350] For modern support, see Kilcullen, (1983), 326, citing Gauthier, (1977), 425-446 and On ranks of creatures; see Nozick, (1974), 45-47.

confirms that

> "Locke said that in the state of nature no-one has liberty to destroy "any creature in his possession, but where some nobler use than its bare preservation calls for it" . . . [ch. 2, para. 6] *Even common animals deserve a measure of preservation in Locke's view. In his account of property in the state of nature, he states that 'nothing was made by God for man to spoil or destroy' (ch. 5, para. 30). To kill an animal just for the sake of killing, with no intent to use it and no nobler purpose, is to invoke Locke's spoilage clause.*"[1351]

Locke thus intended animals not to be destroyed for no reason; a noble cause must exist.[1352] This important yet almost universally ignored natural law limit forces man to view animals not as objects (as they are today under the positive law) but as a creation under man's due care. This viewpoint on animals was quite revolutionary in Locke's day. In his *Some Thoughts Concerning Education*,[1353] Locke firmly prohibits cruelty to animals:

> "[W]hen they had them, they *must be sure to keep them well, and look diligently after them, that they wanted nothing, or were not ill used. For if they were negligent in their care of them, it was counted a great fault, which often forfeited their possession, . . .* I think people *should be accustomed, from their cradles, to be tender to all sensible creatures, and to spoil or waste nothing at all.*" (emphasis added)[1354]

According to Locke,

> "§ 116. One thing I have frequently observed in children, that when they have got possession of any poor creature, they are apt to use it ill: they often *torment*, and treat very roughly, young birds, butterflies, and such other poor animals which fall into their hands, and that with a seeming kind of pleasure. This I think should be watched in them, and if they incline to *any such cruelty, they should be taught to contrary usage*." (emphasis added)[1355]

Locke is unmistakably against cruelty to any living creature, including birds and butterflies. No killing or torture of any living form is allowed: "Children should from the beginning be bred up in an *abhorrence of killing or tormenting any living creature; and be taught not to spoil or destroy any thing, unless it be for the preservation or advantage of some other that is nobler.*"[1356] Locke repeats his limit in the Locke *Second Treatise* by saying that no living creatures can be destroyed unless for the preservation of something nobler.

Tully (1980) writes,

[1351] Emphasis added. Ewins, (2004), 36-43.

[1352] Another author briefly mentions this natural limit while inferring different irrelevant conclusions from Locke's text. Kilcullen, (1983) writes, "Besides the duty to preserve mankind *Locke mentions a duty not to destroy any creature (not only man) wantonly*, that is, expect when 'some nobler use than its bare preservation authorizes its destruction'" (Kilcullen, (1983), 323-344). He thus directly treats this limits as valid for animal life, which is not the case for most of Locke's interpreters.

[1353] Locke, (1693), *Education*. See entire ref. in bibliography.

[1354] Ibid. Para. 116.

[1355] Ibid. Para. 116.

[1356] Ibid.

> "The alteration and appropriation of animals form their natural state to a condition in which they are useful for man's subsistence creates a serious problem because *killing constitutes the destruction of God's property*. Locke returns to first principles to find a solution. Man's Property in the Creatures, was founded upon the right he had, to make use of those things, that were necessary or useful to his Beings [(Locke I.86)] . . . *Killing animals, therefore, is only justified if it is necessary and obliquely intended consequence of the intended act of making use of animal for support.*" (emphasis added)[1357]

Tully thus sees that it is problematic to consider animals to be property in the same sense as other objects. Animals are living creatures to be preserved. They cannot be killed unless under exceptional circumstances. Tully felt that Locke claimed that killing animals is justified only to support the preservation of mankind as a whole.

I partly agree with Tully that preservation of life could justify the "nobler" exception to preserve life, such as when men have no other alimentary substitutes. But during times when sufficient alimentary substitutes exists, killing animals for consumption might not be justified. The harm done by taking the life (created by God) seems to be more important to Locke than a temporary pleasure of bodily senses alone if there is no actual need for the animal as food. I thus argue that a correct implementation of Locke's theory today, when we have arguably sufficient alimentary substitutes, might lead to taking animals from menus if it is proven to be for purely temporary delights of the bodily senses.

Locke also demanded that man care for the living creatures in his possession. He supplied not just a prohibition on killing or torture but also asks that the possessor treat them with due care so that they lack nothing for preservation and are not misused:

> "[B]ut then, when they had them, they *must be sure to keep them well, and look diligently after them, that they wanted nothing, or were not ill used. For if they were negligent in their care of them, it was counted a great fault, which often forfeited their possession,* or at least they failed not to be rebuked for it; whereby they were early taught diligence and good nature. And indeed, I *think people should be accustomed, from their cradles, to be tender to all sensible creatures, and to spoil or waste nothing at all.*" (emphasis added)[1358]

Not taking due care of animals in possessions or even being "negligent" is for Locke a "great fault" which may "forfeit their possession." He repeats that even children should learn to be tender "to all sensible creatures." Tully (1980) noted Locke's efforts regarding animals: "further condition is that the species of animals must be preserved" (Locke I.56).[1359]

Locke's natural limit of animal preservation seemed revolutionary for his time; he needed support that it would lead to usefulness. Locke explains that since time immemorial, the custom in history has been to portray teaching and slaughtering as heroic virtues.[1360] Locke

[1357] Tully, (1980), 118.
[1358] Locke, (1693), *Education*, Para. 116.
[1359] Tully, (1980), 119.
[1360] "All the entertainment and talk of history is nothing almost but fighting and killing: and the honour and renown that is bestowed on conquerors (who for the most part are but the great butchers of mankind) farther mislead growing youth, who by this means come to think slaughter the laudable business of mankind, and the most heroic of virtues. By these steps unnatural cruelty is planted in us." Locke, (1693), *Education*, Para. 116).

then explains that cruelty to any living form can eventually harden men's mind as to cruelty to other men: "*For the custom of tormenting and killing of beasts, will, by degrees, harden their minds even towards men; and they who delight in the suffering and destruction of inferior creatures, will not be apt to be very compassionate or benign to those of their own kind*."[1361]

Forde (2001) also observes that Locke forbids cruelty to animals by arguing that this practice clears the way for cruel treatment of humans (Locke, *Education* 116).[1362] Ewins (2004) recognizes this Lockean limit and adds

> "We *could extend this limitation* to the acts of society under the social contract. *If we assign forests and rare species their real value in the overall scheme of things, this "bare preservation" becomes so valuable that a "nobler use" is hard to find*."… The same could be said of chopping down a tree in a forest for no good reason, or of Robinson Crusoe burning his island." (emphasis added)[1363]

I agree with Ewins's recognition of Locke's natural law limit concerning animals. I disagree with his call for the use of Locke's limits on nature, such as forests, much as with animals. He explains that to Locke, a cause nobler than existence is hard to find for the value of preservation of the community of nature as a whole is immeasurable.[1364] But Locke did not include plant and nature as creatures within this limit—only animals. Plants would belong under limited possessions on the land and its products (Locke II, 32, 33, 38, 42).

5.2.4.1 Locke's meaning of "nobler use than its bare preservation"

Within this thesis I have already demonstrated that to Locke, a nobler use means going above passions and selfish desires for an act that is best for the common good and avoids harm to anyone.[1365] To know reason is to go above selfish fancies and passions, using reason for its own moral limitations—which is thus nobler than satiating an appetite (Locke 12, 124, 136). I also demonstrate that to Locke, the difference between humans and animals is the ability to reason and make a decision not based on passion and instead designed to promote the common good. Locke specifically says that by virtue of being better than the wild beast, the purpose must be for the common good:

> [S]et on work in such actions as the *common good requireth*…unless *presuming man to be*, in regard of his depraved mind, *little better than a wild beast*, they do accordingly provide, notwithstanding, so to frame his outward actions, that *they be no hindrance unto the common good, for which societies are instituted. Unless they do this, they are not perfect.* Hooker's Eccl. Pol. l. i. sect. 10." (Locke II 135, emphasis added. See also Locke II, 159).

[1361] Ibid.
[1362] Forde, (2001), 403.
[1363] Ewins, (2004), 36-43.
[1364] In the same text, Ewins, (2004) explains, "[W]e realise what a profound affect our actions can have, not just on our immediate surroundings, but on the whole world. Cutting down the Amazon will worsen the greenhouse effect, and using CFCs will damage the ozone layer." Similarly, "every species removed from the Earth reduces the diversity of the whole system of life. The less diverse a biological system, the greater its susceptibility to collapse, which would not benefit us. Furthermore, other species have the potential to be of direct benefit to humans (for example, plants can be a source of medicine), a benefit we deny ourselves if we destroy them." Ewins, (2004), 38-40.
[1365] I refer the reader to my analysis beginning on p. 186. See also footnote No. 1050 and p. 197 and follows for further corroboration from other natural law teachers.

To be better than a wild beast, men must direct their actions towards the demands of the common good. To Locke, a "nobler cause than existence" could be one that supports the common good.[1366]

As further corroboration, I refer to Locke's writing on education.[1367] Locke's writing discusses education, demonstrating that rational thought and the ability to follow reason help us govern the "appetites" of the self to follow reason for the good of the whole. Locke recognizes that to duly represent human dignity in its excellence, the needs of the body are subject to the guidance of reason:

> "Due care being had to keep the *body in strength and vigour, so that it may be able to obey and* ***execute the orders of the mind***; the next and principal business is, to *set the mind right*, that on all occasions it may be disposed to consent to *nothing but what may be suitable to the* ***dignity and excellency of a rational creature***". (emphasis added)[1368]

Locke offers similar conclusions later on: To him, the mind is to be educated (like the body) to "deny" its own desires and follow reason even if the appetites direct otherwise. Locke explains that a person is to be educated to obey the rules and limits of reason. The issue is not the existence of these appetites but the power to govern them. Each has the power to deny the satisfaction of selfish desire to be nobler. Following reason is not natural and must be learned and practiced from a very early age, even the cradle. They must not submit to their own desires but to the decision that is the best fit:

> "*Para 38.* It seems plain to me, that the *principle of all virtue and excellency lies in a power of* ***denying ourselves the satisfaction of our own desires, where reason does not authorize them***. This power is to be *got and improved by custom, made easy and familiar by an early practice.* If therefore I might be heard, I would advise, that, contrary to the ordinary way, children should be used to submit their desires, and go without their longings, even from their very cradles. The first thing they should learn to know, should be, that they were not to have anything because it pleased them, but because it was thought fit for them."(emphasis added)[1369]

Grotius explains this dignity of reason:

> "[A] notion arises of their being agreeable to ***reason, that part of a man, which is superior to the body***. *Now that agreement with* ***reason, which is the basis of propriety, should have more weight than the impulse of appetite; because the principles of nature recommend right reason as a rule that ought to be of higher value than bare instinct.*** As the truth of this is easily assented to by all men of *sound judgment without any other demonstration*, it follows that in inquiring into the laws of nature the first object of consideration is, what is agreeable to those principles of nature, and then we come to the *rules, which, though arising only out of the former, are of* ***higher dignity***, and not only to be embraced, when offered, but pursued by all the means in our power."[1370]

[1366] For further corroboration of Locke's meaning and insistence on the common good, I refer readers to p. 100.
[1367] Locke, (1693), *Education*, Para. 31-38; see also p. 191.
[1368] Locke, (1693), *Education*, Para. 31.
[1369] Ibid. Para. 31-38; see also p. 191.
[1370] Grotius, (1625), *War and Peace*, Bk. I, Ch. 2, Sec. 1 (emphasis added); see also p. 187.

Grotius thus demonstrates with the help of other sources that reason is superior in importance, value, and dignity to the impulse of appetite. Any person with sound judgment can come to this conclusion. All matters deriving from the use of reason have more value and dignity than mere selfish appetites of the body.

Locke and his predecessors felt that "nobler" causes require one to follow reason above the needs of the body and make a decision that is best for the whole. Murphy (1982) also confirms this view of the dignity of reason when discussing Pufendorf:

"*Man's dignity, by contrast* (to animals), *lies in a voluntary conformity to rule. . . . The natural liberty of man is affirmed, but as conditioned by reason and restrained by natural law* . . . Natural law requires that each man should treat another as his equal by nature, as much a man as he is himself." (emphasis added)[1371] He confirms that for Pufendorf, Man's superior "dignity" derives from the moral choice given to men to go above mere instinct and engage in "voluntary conformity to the rule of reason."[1372]

Windstrup (1980) also observed,

> "Indeed, the context in II, 6 suggests that the *very same limitations on our right to self-destruction or the killing of other human beings applies to our right to the use of "inferior" animals. All are equally God's workmanship and property.* The standard that seems to come closest to differentiating human from nonhuman animals-other than, it goes without saying, *the superior power of human beings in most cases-is man's possession of the ability to reason.*" (emphasis added)[1373]

Windstrup thus also recognizes that Locke clearly means this limitation on waste was not only due to humans but also animals being under the creation of a superior being. He also confirms that what makes a distinction among the animal kingdom and humanity is their ability to reason.

Locke found it important to protect the whole, even above the preservation of self. His use of reason, the preservation of the whole, and the natural law limits seeking to limit the needs of the self for the preservation of the whole. For Locke, the only way to truly respect human dignity is to follow reason and limit self-appetites, obeying the preservation of the whole. I conclude that when Locke refers to a "noble use," he means the use for the good of the whole, above mere pleasures and appetites.[1374]

A nobler use than existence in accordance with Locke's meaning might put in doubt the western use of animals for profit, pleasure, or experiments. We are not to kill animals in possession unless it is for a nobler need than the pleasure of the body. It must be a need that is for the support of the preservation of the common good. Potentially life-saving techniques borne of animal experiments could justify this exception; experiments for cosmetic use would

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[1371] Murphy, (1982), 487, citing Pufendorf, (1672), *De iure Naturae*,Vol. II, Lib. 3, Cap. 15, Para. 33; Vol. II, Lib. 3, Cap. 19.

[1372] Locke states that men are to follow the findings of reason (Locke II, 57, 56, 60; p. 64, p. 171, p. 180). See also Von Leyden, (1956), 28, 30; Grotius, (1625), *War and Peace*, Bk. I, Ch. 1, Sec. 10; p. 111.

[1373] Windstrup, (1980), 173-174, 175. See also; "*Section 6 of the Treatise is not only a limitation on our freedom to destroy ourselves. It also concludes from the equality of human beings as God's creatures that we are further forbidden to kill each other and even obliged to endeavor the preservation of all mankind as much as our own preservation permits. In section 4, Locke finds it self-evident that creatures 'born to all the same advantages of Nature, and the use of the same faculties' should enjoy political equality in the state of nature.*" Windstrup, (1980), 175

[1374] For further support for these arguments, discussion beginning on p. 183 and p. 99.

likely not support the common good. This Lockean limit might call into question whether man should kill and eat animals because proper substitutes for life preservation to exist. Taking a life for pure temporary bodily pleasure would not seem to cover Locke's meaning of "nobler use" than the person's existence.

5.2.4.2 Animals limit: Corroboration from Genesis

Even in Genesis, it appears that the story of creation does not teach specifically to the use of animals for food. The following are general conditions of property rights granted by God to humanity[1375] in Genesis, *Bk. of Creation*, Ch. 1, Sec:

כחוַיְבָרֶךְ אֹתָם, אֱלֹהִים, וַיֹּאמֶר לָהֶם אֱלֹהִים פְּרוּ וּרְבוּ וּמִלְאוּ אֶת-הָאָרֶץ, וְכִבְשֻׁהָ; וּרְדוּ בִּדְגַת הַיָּם, וּבְעוֹף הַשָּׁמַיִם, וּבְכָל-חַיָּה, הָרֹמֶשֶׂת עַל-הָאָרֶץ.	**28** "And God blessed them; and God said unto them: 'Be fruitful, and multiply, and replenish the earth, and *subdue it*; ...."[1376]
כטוַיֹּאמֶר אֱלֹהִים, הִנֵּה נָתַתִּי לָכֶם אֶת-כָּל-עֵשֶׂב זֹרֵעַ זֶרַע אֲשֶׁר עַל-פְּנֵי כָל-הָאָרֶץ, וְאֶת-כָּל-הָעֵץ אֲשֶׁר-בּוֹ פְרִי-עֵץ, זֹרֵעַ זָרַע:לָכֶם יִהְיֶה, לְאָכְלָה.	**29** "And God said: *'Behold, I have given* you *every herb yielding* seed, which is upon the face of all the earth, and *every tree*, in which is the *fruit* of a tree yielding seed--to you it shall be *for food*"[1377]
לוּלְכָל-חַיַּת הָאָרֶץ וּלְכָל-עוֹף הַשָּׁמַיִם וּלְכֹל רוֹמֵשׂ עַל-הָאָרֶץ, אֲשֶׁר-בּוֹ נֶפֶשׁ חַיָּה, אֶת-כָּל-יֶרֶק עֵשֶׂב, לְאָכְלָה; וַיְהִי-כֵן.	**30** "*and to every beast* of the earth, and to *every fowl* of the air, and to every thing that creepeth upon the earth, *wherein there is a living soul,* [I have *given] every green herb for food.*' And it was so. "[1378]

In Genesis Ch. 1. Sec. 28, God "blesses" humanity to "replenish" the earth and "subdue" the rest of the creation. Subdue requires managing the earth for the benefit of all creation. This is interpreted as such by Locke himself: "God and his reason commanded him to *subdue the earth, i.e. improve it for the benefit of life*, and therein lay out something upon it that was his own, his labour" (Locke II, 32, emphasis added). The creation of God seems to be entrusted in the hands of humanity on the condition that they preserve it for the benefit of the whole of creation.

God uses the term "given" to show a total, unrestricted grant to humanity in reference to all the vegetation, the herbs and trees yielding seeds, while specifically mentioning it is given "for food." However, when it concerns a "living soul," men are only given the right to "*subdue it*" (Genesis, *Bk. of creation*, Ch. 1, Sec. 28). Here, there is no mention of the Hebrew word for "food," implying that man, at least in the original version of creation, had no right to use animals for food or as unconditional property but only to subdue or ameliorate for the benefit of life or the whole. At the very least, animals were to be treated differently than plants. Genesis 1.30, God tells beasts to eat every "green herb," specifically avoiding fruits of

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[1375] Locke considers the original grant of God to mankind specifically cited in Gen., *Bk. of creation*, Ch. 1, Sec. 28, 29, 30, and Ch. 9:2 as the foundation of the property rights doctrine (see Locke I, 41, 86; Locke II, 25, 31). See p. 146. This is confirmed by Forde, (2006), 232-258 and Olivecrona, (1974), *Locke's Theory of Appropriation*, 220-234, entire article.

[1376] Genesis, *Bk. of creation*, Ch. 1, Sec. 28. Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1377] Genesis, *Bk. of creation*, Ch. 1, Sec. 29. Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1378] Genesis, *Bk. of creation*, Ch. 1, Sec. 30. Emphasis added. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

trees with seeds that are given to humans (Genesis, *Bk. of creation*, Ch. 1, Sec. 29 &30). For their bodies and digestion, man was supposed to eat only the vegetation that yields seeds. Humans were to "subdue" animals; they were not "given" them "for food." The different vocabulary signifies different classes of treatment.

Interestingly, it was not every type of vegetation but only those that grew seeds that allowed the continuation and preservation of the whole. The words "for food" seem to indicate an unconditional grant as to the fruits of the trees and vegetation growing seeds while any other grant was a restricted use for the preservation of the whole, as with the word "subdue." This demonstrates that God's grant to humanity and rest of creation included a careful attention for the whole community of nature. This is in harmony with my interpretation of Locke's property rights.[1379] To confirm that we were not designated by the creation grant to eat animals, it seems that the right to eat animal flesh was only recognized after the time of Noah and the flood, and even then, there were strict limits and conditions.[1380]

5.2.4.3 Conclusions

When it comes to living creatures like animals in possession, Locke created noble natural law limits. No living form can be destroyed unless it is for a noble cause such as the preservation of the common good. No cruelty is allowed, and due care and preservation of animals in possession is recommended. Tully (1980) confirmed this: "*[A] further condition is that the species of animals must be preserved*" (Locke I, 56).[1381] An animal found without due care or that is misused could be given to someone else who would provide for its preservation. A due application of this limit would oblige owners of animals to become more responsible for their due care and preservation of any living form in their possession.

Contemporary society's use of animals as property for the unrestricted pleasure of man breaches this natural law limit on living creatures. As mentioned earlier, there are many issues with using animals for profit, experiments, massive elevation for food. Is taking animal life for the satisfaction of our purely temporary bodily needs "nobler" than the animal's very

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[1379] This can be further supported within the vision written in the Genesis, *Bk. of Isaiah*. Ch. 11, Sec. 6-7. See :

ו וְגָר זְאֵב עִם-כֶּבֶשׂ, וְנָמֵר עִם-גְּדִי יִרְבָּץ; וְעֵגֶל וּכְפִיר וּמְרִיא יַחְדָּו, וְנַעַר קָטֹן נֹהֵג בָּם.

6 And the *wolf shall dwell with the lamb*, and the *leopard shall lie down with the kid*; and the calf and the *young lion and the fatling together; and a little child shall lead them*.

ז וּפָרָה וָדֹב תִּרְעֶינָה, יַחְדָּו יִרְבְּצוּ יַלְדֵיהֶן; וְאַרְיֵה, כַּבָּקָר יֹאכַל-תֶּבֶן.

7 And the *cow and the bear shall feed; their young ones shall lie down together; and the lion shall eat straw like the ox*.

Emphasis added. It was predicted that one day, cruel animals, including lions, would be nourished only by vegetation and live peacefully side by side with lambs. This is confirmed by the Kabalistic opinion of Rab Kuk's vegetarian world vision based on Genesis (Bk. of Isa. Ch. 11, Sec. 6-7), whereby even animals would not eat each other's flesh and eat only herbs. See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1380] Genesis, Bk. of *Noah*, Ch. 9, Sec:

ג כָּל-רֶמֶשׂ אֲשֶׁר הוּא-חַי, לָכֶם יִהְיֶה לְאָכְלָה:כְּיֶרֶק עֵשֶׂב, נָתַתִּי לָכֶם אֶת-כֹּל.

3 Every moving thing that liveth shall be for food for you; as the green herb have I given you all.

ד אַךְ-בָּשָׂר, בְּנַפְשׁוֹ דָמוֹ לֹא תֹאכֵלוּ.

4 Only flesh with the life thereof, which is the blood thereof, shall ye not eat.

See Bible, Masoretic, (1917 ed), Hebrew/English website within bibliography.

[1381] Tully, (1980), 119, emphasis added.

existence? Perhaps during Locke's day it was necessary for subsistence. But today, with the many available alimentary substitutes, the question must be re-examined carefully. There are sufficient alimentary substitutes for most animal flesh, so taking an animal's life for bodily pleasure might not be justified under Locke's natural law limits regarding the preservation of the community of nature (Locke II, 6). Locke is clear that to kill, there must be a nobler cause than the right of existence. This limit is mentioned in the same paragraph and on the same line that discusses not destroying human life as all belong to the one community created by God. It seems clear why these passages are so often ignored; they oppose the historical and modern societal use of animals.

If Locke's words are taken seriously, the current common use of animal life would have to change at its core. Animal life should be respected for its value and part in the community of nature. Governmental committees specializing in the due care of animals in possession would be necessary. Decisions on whether an animal is killed to support the preservation of the common good (not simply for bodily satisfaction) would be made on a case-by-case basis. Further, the due care of the animals is to be observed so that if the animal is neglected or misused, its possession is passed to someone who would take care of it properly.

I argue that using this Lockean natural law limit is a better solution than the inefficient ones proposed today—fines without criminal liability. Extreme suggestions propose giving animals equal rights with humans so that proper criminal cases could be brought to court on their behalf (e.g., the utilitarian philosophy). An increasing number of modern authors argue that this philosophy advocating equal rights for animals (which are incapable of taking on the duties of humans) is a danger to the preservation of mankind; dangers include possible deprivation of human rights and anarchism in the legal system due to a confusion of interests. Animals will also inevitably outnumber humans, and they vastly different abilities and interests.[1382]

Singer, a leader in this movement, actually proposes changing the definition of a person to refer to an animal's cognitive level while discriminating among its own members regarding intellectual abilities. The special moral status of mankind (capacity to reason for the good of others), deriving from human nature and repeatedly cited by most influential minds since the dawn of human civilization, is replaced with pain or pleasure and shared with non-human animals. Yet Singer's use of reason does not align with his own utilitarian philosophical foundations, which use reason as a human deductive tool in discerning good and bad laws and adhering to duty above self-inclination.[1383]

The philosophical father of the utilitarianism, Bentham (1843) himself recognized that conferring rights without a correlating obligation or restraint could lead to anarchy.[1384] Bentham is erroneously used as a source to support extreme animal rights: For if he were so opposed to rights without correlating obligations, how could his writing be used to defend equal rights for animals, which cannot reflect on inclinations and commit to corresponding obligations?[1385]

Also dangerous is Singer's conclusion that certain groups of people (infants and the brain-

[1382] See entire article of Scruton, (2000), find in bibliography under internet sites.
[1383] See p. 207.
[1384] Mill, (1833), 392-393 citing Bentham, (1843), *Anarchical Fallacies*, Vol. 2, emphasis added.
[1385] See p. 208.

damaged, for example) do not meet the definition of personhood and as such are exempt from the protection of rights. Singer noted, "Human babies are not born self-aware, or capable of grasping that they exist over time. They are not persons." According to Singer, foetuses and newborns have no "interests." As such, the life and interests of a newborn are of less value than the life of an animal.[1386] Singer (2004) also noted that "some nonhuman animals are superior in their capacities to some humans, for instance, those suffering from profound intellectual disabilities."[1387]

Singer also notes, "When the death of a disabled infant will lead to the birth of another infant with better prospects of a happy life, the total amount of happiness will be greater if the disabled infant is killed. The loss of the happy life for the first infant is outweighed by the gain of a happier life for the second. Therefore, if killing the hemophiliac infant has no adverse effect on others, it would, according to the total view, be right to kill him."[1388] Singer proposed a post-birth assessment period during which parents, in consultation with the physician, may legally kill their disabled offspring if doing so would increase the total happiness of all.

Singer appeared to be interested in equal morality for animals while setting aside human morality. Killing a disabled infant, for example, presents no moral difficulty if it is better for the greater happiness of others. The greater pleasure principle also includes non-human sentient beings (animals); for Singer, there is no "moral ground" on which to prefer human interests to animal ones. So Singer would propose morality for animals but simultaneously stated that there is no reason to act morally: "When we reject belief in a god . . . we must give up the idea that life on this planet has some preordained meaning. Life as a whole has no meaning. Life began [in] a chance combination of molecules; it then evolved through chance mutations and natural selection. All this just happened; it did not happen for any overall purpose."[1389]

A further demonstration of the danger of conferring equal rights on animals lies in the past with a government's first known attempt to break the species barrier. The Nazis sought to degrade the human quality of life legally. Humans as a species lost their sacrosanct status, with Aryans at the top of the hierarchy, followed by wolves, eagles, pigs, and Jews at the bottom, on the same level as rats. Ironically, On November 13, 1937, a law was incorporated regulating animal transport by car; and on September 8, 1938, a similar law dealing with animals on trains was enacted.[1390] At the same time, men, women, and children were transported in worse conditions than animals and imprisoned at death camps. A fair conclusion is that destroying the uniqueness of human dignity, heralded by the best minds and civilizations throughout history, is a proven danger to the preservation of human kind. [1391]

[1386] Singer, (1979), 122–123.
[1387] Singer, (2004), 19-21. For further discussion, see Singer, (2002), entire Ch. 1.
[1388] Singer, (2002), 55–63, 110–117, 172, 186.
[1389] Singer, (1979), 331.
[1390] Sax, (2000), 114, citing Giese, Kahler, (1939), 190–220, 261–272.
[1391] See also Donald, (2011), 17-18, 'Civil Society and the State', Para. 8-13 (find in bibliography under internet sites); entire articles of Edwin, (2005), within bibliography under internet sites and; Scruton, (2000), also within bibliography under internet sites; Cohen, (1986), *Use of animals*, 865–870. See also Jennings, (2009), entire article, find in bibliography under internet sites.
Certain groups of animal rights extremists already use animal rights as a "legal" excuse to even kill humans for the better good of certain animals. See, e.g., http://www.consumerfreedom.com/news_detail.cfm/h/4262-animals-vs-human-animals.

To avoid these dangers while preserving animal life, I argue that there is no better solution than applying to the positive law Locke's natural law limits on the possession of animals. Humans would thus be responsible for preserving animals as part of the preservation of the natural community.

5.3 **Conclusion on Locke's natural law limit**

To Locke, property rights as a whole, including those involving common property, land, natural resources, products of the land, and even living creatures, all have moral natural law limits that guarantee the long-term preservation of the whole for all commoners of the natural community. There is the recognized limit of no waste of land, products of land, or any other perishable goods useful for life.[1392] They must be used one way or another as perishing from non-use could harm another's share in the community (who could have used the object after a demonstrated need for life preservation). Another is the "as enough and as good" limitation, which concludes that during appropriation, one must also preserve and maintain an object for a similar future use.[1393] Locke thus required men to be responsible to their material possessions so that other commoners within the natural community could enjoy a similar use and would not be harmed by the appropriation.

If the object appropriated is land, one must not only preserve it and avoid waste but also put boundaries via enclosure and continue the land's amelioration and cultivation for the good of the common stock or the "benefit of life." Locke's vocabulary is clear as to the continuing amelioration and cultivation of the land for all commoners (Locke II, 32, 33, 38, 42).[1394] Absent such amelioration, the land should revert to another who would ensure it. Another limit hails from Locke's words regarding animal life in possession (Locke II, 6). Here too, Locke requires men to become responsible owners and apply due care to any life form in their possession and preserve it. Owners should seek to avoid cruelty and not kill. The only exception to the limit on killing a life form in possession is when it ensures the life support of the common good, which is and must be nobler than appeasing the owner's bodily pleasure (Locke 12, 124, 136).

Locke supported natural rights to property, yet those rights are conditioned on natural law limits that respect the same rights of other commoners. Locke thought that the only way to preserve the whole community in a lasting way was to require men with the power to reason to use this reason to limit their needs and become responsible for all creation.

Contrary to Macpherson and his followers, who claimed Locke based property rights on natural law and then supported the unlimited possession of property through the creation of society and consent, I join modern interpreters such as Tully, Simmons, Dunn, and Ashcraft, who demonstrated that Locke recognizes limits on the use of property. Locke's property rights cannot be absolute ownership rights because conflicting self-interests would harm the natural community.[1395] "The fundamental and undifferentiated form of property is the natural right and duty to make use of the world to achieve God's purpose of preserving all his

[1392] See p. 215.
[1393] See p. 224.
[1394] See p. 234.
[1395] See p. 210; Simmons, (1992), Ch. 5.1, citing Reeve, (1986), 18-19; Shapiro, (1986), 146-147.

workmanship."[1396]

After the introduction of money, Locke included consent as a necessary condition for the creation of private and conventional property rights. But his natural law limits remain valid. Without the perpetual validity of the natural law limits that guarantee that no one is harmed by appropriation, Locke's property rights are subject to society only and as such lose their natural law basis and its consequent eternal protection. Locke needed natural law limits to validate his property theory. Without them, present and future members of the community could be harmed by the conflicting accumulation of property if that accumulation does not respect other similar rights.

Most Locke interpreters argue that consent and the use of money make obsolete Locke's no waste and "enough and as good" limits. But to Locke, the natural law limit of no waste did not disappear with the introduction of money but remained valid for perishable goods, land, its products, and other goods useful to life preservation. The limitation on the use for the purpose of security and comfort or convenience of life was merely expanded (Locke II, 37).[1397] An object may be used by the appropriator for any kind of enjoyment, but when it is proven that the object perishes or spoils with no use, then the proposed owner would be taking more than a fair share—a share that belongs to others who need it to preserve life.

Consent via conventional agreements is still restricted by natural law, which must always guide the positive law in morality.[1398] Within this thesis, I demonstrate superiority of the law of nature (Locke II, 135) and that Locke could not have sought to abolish all natural law limits on the accumulation of property. Rather, to Locke, natural law is the eternal superior law relevant in all times, even after the transition to private property (Locke II, 135, 12, 131, 136, 137).[1399] In any event, the no waste and "enough and as good" limitations remain universally relevant and are an unavoidably integral part of Locke's property rights. One must always respect the share of others to avoid harming others when taking property.

We based our common law of property on Locke's natural law rights[1400] while defending individual rights against the arbitrary power of the government. Locke's property rights have had a powerful influence on the most important fights for natural, individual, inherent rights against tyranny, such as the American, French, and Spanish revolutions during the 18th and 19th centuries.[1401] However, nowhere is it mentioned in the positive law of property that Locke created clear correlating natural law limits to preserve the same rights for others for long-term preservation of the whole community, which is the aim of the natural law (Locke II, 7, 8). Many of us today have property rights against the tyranny of the government. However, if we are not responsible and limit our property use to ensure the preservation of the whole, there will always be a risk that conflicting personal interests will harm the natural community, as occurs today.[1402]

Basing the positive law of property on Locke's natural rights[1403] is not enough. This has only led to damage the natural community. A natural law solution for long-term preservation of natural resources, animal life, and humanity as a whole would apply and incorporate Locke's

[1396] Tully, (1980), 98-99; Ashcraft, (1987), 126-27, Waldron, (1988), 146.
[1397] See p. 137.
[1398] See p. 23 and p. 34.
[1399] See p. 29.
[1400] See p. 6.
[1401] Ibid.
[1402] See p. 11.
[1403] See p. 6.

correlating natural law obligations that man be responsible for the whole community of nature. The positive law must start applying not only the natural individual rights of property but also the correlating obligations as detailed within this chapter. This ensures equal rights for all commoners in the natural community of self-government. Applying Locke's natural law limits shifts the responsibility to the owners of property and might cause a tremendous change in the positive law of property as it is known and applied today.

The changes will oblige each individual to become responsible for the common good via the maintenance of objects and no waste of perishable goods (or giving them to others who need them). Major changes would involve natural resources, which must be continually ameliorated, and the responsibility for the preservation of animal life. Applying Locke's limits on animal life might keep animals under the definition of life form possessions. But this would be a solid foundation for the preservation of animals based on natural law and would be more efficient and safer than any other proposed solutions.[1404]This solution could call into question our use of animals today. Killing them must be justified by the demonstration of a "noble" need to support the common good. Animal experimentation for cosmetic use might no longer be justified. Saving humans from deadly diseases could be justified. Due to alimentary substitutions, consumption of some animal groups as food might no longer be accepted if unnecessary for survival and used only for bodily pleasure. Such use would likely not rise to the level of a "noble" exception ("noble" implies something more than bodily pleasure—it is something reasonably assured to contribute to the common good).[1405]

After this application of the natural law within the positive law, to control natural law obligations and its incorporation into property law, governmental arbitration delegations could be created in every region. Citizens could send complaints if they have evidence of waste or non-maintenance of perishable property/property held for future use. Citizens could petition for the property by demonstrating a need. Items such as fruits that are about to perish could be transported to places where they are needed to preserve life. Land, if not ameliorated and cultivated for future use, could be given with use rights to someone willing to ameliorate it for the common good, after giving the owner an opportunity to remedy the breach. Delegations could be construed as being responsible for living creatures receiving due care and ensuring non-destruction except to support the common good. This would mean that property ownership would no longer be unlimited and exclusive but conditioned on the responsible role of the owners to obey the natural law limits for the long-term maintenance of the natural community. Creative implementations of these principles could change the core of property law.

Locke is not opposed to unlimited accumulation of property for enjoyment, security, comfort, and convenience. Locke even thought money necessary to expand the "no waste" limit; with the help of money, non-perishable goods could be accumulated based on labour and the owner's merit.[1406] Those natural law limits do not concern those of good fortune. The point was not the quantity (Locke II, 46) but the careful preservation of natural resources under ownership for the sake of the natural community.

[1404] See p. 254.
[1405] See p. 186.
[1406] See p. 34 and p. 143.

6 Final Conclusions

In this thesis, I argued that if we are to search for well-founded solutions for the preservation of the natural community, natural resources, animals, and mankind as a whole, modern society needs must reassess the current positive common law of property and if possible, the source of the problem.

As examined in the introduction and the chapter on natural law, property law is based on moral natural law sources, including Genesis, which have guided mankind since the dawn of human civilization. Locke, among others, is a recognized foundation of the modern common law of property. Locke is also credited with the notion of protected individual property law based on natural law values in opposition to the tyranny of arbitrary government power.[1407] In exploring the origins of property law, I discovered the importance of Locke's intentions for the good of the whole—a notion that is not represented, in any way, in any positive property law.[1408] Locke's noble and moral concern for the good of the whole is based on natural law ideas but is consistently ignored in property law.

A review of the *Second Treatise* demonstrates that one cannot read Locke's property rights without giving due consideration to his natural law limits on those same rights, which respect the equal rights of others and preserve the whole. To Locke, the purpose of natural law is the peaceful, safe, and mutual preservation of the whole natural community (Locke II, 7, 8).[1409] Locke indeed believed that a long-term preservation of the natural community was possible but only with the help of natural law limits. Conflicting self-interests are bound to overlap and benefit individuals while harming others as well as the common stock. To Locke, the only way to avoid this harm was for humans with the capacity to reason to apply this reason and restrict their desires for possessions, including their person (Locke II, 6). When it comes to person and liberties, for example, all individuals have the same right to freedom and self-governance except at the expense of other commoners. The restriction forbids harm to others in any way that might damage quality of life, liberty, or possessions (Locke II, 6).

The current legal system allows unlimited and unrestricted accumulation of property, motivated by self-interests alone. [1410]For Locke, this could not last because self-interests are doomed to overlap and damage some while profiting others. Locke insisted that respecting the value of the good of the whole using natural law limits was the only way to preserve the whole in the long run. Using reason to apply limits to the accumulation of property for selfish uses would lead to long-term preservation of the community of nature. If we are to respect the true noble values of Locke as the basis of modern property law and his natural law origins (which all defend the preservation of the whole in spite of inconveniences to self), the positive law of property must reflect those limits. Currently, only the natural rights of the self are reflected in the positive law. The purpose is for the natural law obligations to be equally reflected so that Locke's preservation of the whole could work in the long run without causing any harm.

The application of Locke's natural law limitations to the positive law would entail a radically new understanding of the unrestricted and selfish idea of property that we have today. It would basically mean that land, as well as animals could no longer be used without limits for

[1407] See the positive law of property and revolutions of natural rights based on Locke from p. 6.
[1408] See p. 100.
[1409] See p. 99.
[1410] Some minimal limitations are observed in laws pertaining to eminent domain, zoning, anti-trust, exotic animals, and adverse possession.

human preservation and the preservation of the whole.

A possible way to apply it could be with a trust system; each landlord could become a trust holder of the appropriated land with obligations to ameliorate it for the good of the whole and to control waste. Tully (1980) could corroborate this trust system.[1411] Tully saw Locke's property rights in land as property in trust for the whole. Tully interpreted Locke as proposing limited use rights restricted by natural law limits.[1412] However, a trust holding system will take rights from the property holders. I cannot agree with Tully's interpretation that to Locke, there are no private property rights in land.[1413] This goes against Locke's own words allowing private property rights in objects and land if limited to natural law conditions (Locke II, 32, 38).

Another proposal of this thesis (one that avoids taking property rights) is to create governmental delegations that examine complaints regarding land or its products that are unused and left to perish. This might create reversions in land or at least some use rights for others who could demonstrate a need for it to preserve human life. This, after giving the owner an opportunity to remedy the breach. The owner of the land would have to ensure the enclosure of the territory and that the "enough and as good left" principle is satisfied by increasing the property opportunities of others by, for example, supplying places of work for the community or regularly maintaining and ameliorating the land for future similar use. Most importantly, the owner would have to demonstrate his continuing amelioration of the land for the benefit of life. This, however, could only work when arbitral government committees respect the natural law and its protections for individuals. Otherwise, a corrupt government could use such a tool to take away individual property rights. Such committees must seek creative ways to implement these natural law limits.

The application of this interpretation of Locke would entail obligations to become responsible for the good of the whole and to respect certain obligations corresponding to the rights. Each could exchange with money and accumulate property for any sort of use, including security and comfort. However, the perishable property owned must actually be used and not wasted. Perished property with no use whatsoever could be damaging to the share of the community. A report of waste could revert unused and almost perished property to someone else who could use it for the preservation of life.

The book of Genesis corroborates man's responsibility to his environment. The relationship between men and nature as its surroundings (including the land) is reflected thusly: "And the LORD God took the *man*, and put him into the *garden* of Eden *to dress it and to keep it*" (Genesis, *Book of Creation*, ch 2, Sec. 15, emphasis added).[1414] It is thus clear that man's purpose and responsibility is to manage and preserve God's creation (to "dress" it and to "keep" it). Genesis is an original source for the natural law of property. As such, it is consistent with Locke's writings as to the first purpose of natural law: the preservation of the whole. The responsible role of humanity with regard to the good of the whole is thus also

[1411] For Tully, (1980) "The kind of exclusive right which Locke develops is the *uniquely English concept of the use which a trustee is said to have in another's property.* The central aspect of this is '*the cognition of the duty of a person to whom property has been conveyed for certain purposes* to carry out these purposes'" (Holdworth, (1926), IV, 410, cited in Tully, (1980), 122). "The trustee is also said to have a property in the use. The condition of the trustee corresponds to man's existential condition in using his property" Tully, (1980), 122 (emphasis added).

[1412] For Tully, (1980), "*[T]he common remains common and the persons remain tenants in common*" (emphasis added). Tully, (1980), 122.

[1413] See Tully's interpretation of a right of use on p. 239.

[1414] See Reference on p. 238. Genesis is a recognised source of Locke (Reference on p. 146).

recognized by its description in Genesis as the source of natural law and property law recognized by Locke.

Also related to the issues of the nature of man and environment is man's punishment: "Therefore the LORD God sent him forth from the garden of Eden, *to till the ground from whence he was taken*" (Genesis, *Book of Creation*, ch 3, Sec. 23, emphasis added)[1415]. Here, there is a clear desire for man to "till" the "ground" from where he was created so that he could enjoy it.[1416] God decided to "send" us "*forth from the garden of Eden*" to "*till*" the ground from whence we came. By painstakingly verifying the origins of nature and our integral role among humanity, we realize that it is for our own benefit to work for the benefit of the whole.

A careful reading in the original language, Hebrew, demonstrates that the Creator gave the earth's natural resources "for food," for "*wherein there is a living soul*" (Gen 1.29–30, emphasis added)[1417], not just for humans. However, mankind must subdue (ameliorate) for the benefit of life or control (Locke II, 32) the rest of God's creation ("*over every living thing that creepeth upon the earth*" (Genesis 1.28, emphasis added)[1418]. Mankind was created in God's "*image, after our likeness*" (Genesis 1.26, emphasis added)[1419]. After God created all other living creatures to live in harmony with nature, God created men to supervise and control the work of creation so that everything lasts in complete harmony, in accordance with the natural laws that cannot be overruled, even by God (as Grotius's correctly noted).[1420]

An overall reflection on the role of natural law limits in Locke calls into questions the modern treatment of animals. Locke clearly stated that one cannot destroy any living creature unless for a nobler cause than existence. As demonstrated above, for Locke, "noble" implies going above the inclinations of the self for the support of the good of the whole. This means that even eating animals, if not to sustain life, as in most civilizations today, could be based solely on the temporary pleasure of self.

Application of natural law limits shall thus entail an overhaul of the law of property; it must be shaken from its roots and set the obligation of responsibility for the good of the whole on the same level as the rights themselves. This is contrary to the purely selfish motivations of property law in our current legal system. This would entail an eternal obligation to respect the *suum cuique tribuere* of all commoners and avoid harm to anyone. There is an obligation to respect life, liberty, and property of others—the same rights we want others to respect (Locke II, 6).

The respect promoted by Locke's natural law limits is in harmony with the second central thesis herein regarding Locke's moral use of reason. To Locke, to maintain the dignity of human nature, we must govern certain desires of the self that are not aligned with the guidance of reason for the good of all, or ones that are harmful to others (Locke II, 12, 124, 136).[1421] This is supported by other natural law authors and well as Locke's predecessors,

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[1415] See reference on p. 238.
[1416] See Genesis references on p. 237. See Markley, (1999), 817-837.
[1417] See Genesis references on p. 252.
[1418] Ibid.
[1419] Genesis, *Bk. of Creation*, Ch. 1, Para. 26:

כו וַיֹּאמֶר אֱלֹהִים, נַעֲשֶׂה אָדָם בְּצַלְמֵנוּ כִּדְמוּתֵנוּ;. **26** And God said*: 'Let us make man in our image, after our likeness;*

Emphasis added. See Bible, Masoretic, (1917 ed) Hebrew/English website within bibliography.
[1420] See p. 252.
[1421] See p. 169.

who all corroborate my far-reaching argument that a majority of humanity is not yet guided by the full use of reason such that we are responsible for the good of the whole.[1422] We all have the capacity to use reason, which separates us from the animal kingdom. However, it is by using and following reason with sincere responsibility for the whole that makes a man a dignified human, above the animal needs and desires of the pure self.

Locke's notion of reason, supported by other natural law origins, shows that we are not yet the responsible humans we should be. When a person is responsible and follows reason while denying certain self-appetites for the good of the whole, he or she reveals the true dignity of human nature. Until that day, for Locke, as well as for many of the greatest minds in existence,[1423] we have not reached the full potential of our reason. We might be socially and culturally developed, but "incontinent," a term used by Aristotle to describe those who have no freedom to choose better than the immediate passions and needs of the self. There have always been few humans who are sincerely responsible for the whole, yet never a majority. For this reason, the common shared by all has been consistently harmed for the profit of some and to the detriment of others.

Locke claims that reason involves more than simply using certain cognitive judgmental abilities based on circumstances; reason represents the ability to demonstrate moral capacity and sacrifice of certain pleasures of the self, if not in competition with our own preservation, and instead to act for the best of the whole. It is that which makes us dignified humans.

For Locke, most humans are not using the full and constant use of reason for all their actions. Very few act based on selfless motives. Most have been educated to care only for self and self-motives. Locke demonstrated that this is not what makes us humans, made in the likeness of the Creator—who, to Locke, represents pure reason.[1424] This interpretation goes along with my findings on Locke's natural law limits and the eternal limitations as well as embracing responsibility for the common good.

Presently, there are different threats stemming from mankind's self-destructive and selfish nature, which encourage natural reactions. Answers are to be sought in the system of law whose purpose is the preservation of the whole of creation: natural law. This is the same system that has guided mankind since the appearance of human civilization. I am aware that some modern interpreters see natural law as "nonsense on spilt" while arguing for a system based on agreement and consent only. [1425]

My purpose here is not to defend natural law. Many have done this extensively (see the first chapter, in which I demonstrate that it has been the only system of moral guidance following human civilization since its inception and which has become the basis for positive law). I have tried to demonstrate briefly that natural law ideas are supported by some of history's most influential juridical-philosophical minds. In short, I argue that none of the other systems of property proposed are so historically good at protecting and guaranteeing individual rights while limiting the possible abuse of self in harming others; as such, it preserves the whole.

The time has come to properly apply natural law, which seeks the long-term preservation of the whole. A good start would be to take the recognized origin of property law and the source of the capitalistic problem—John Locke—and demonstrate that he never argued for selfish,

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[1422] See p. 73.
[1423] See p. 197.
[1424] See note 19 and p. 145.
[1425] I demonstrated that this was taken out of context; it actually supports my argument for correlating obligations (p. 208; see also p. 209).

unlimited accumulation. We must re-apply natural law obligations as Locke's theory is based on the eternal validity of natural law limitations for the good of the whole. This theory can be inferred from his insistence on the common good, his natural law limitations, his use of reason, as well as his references to the state of nature.

The third central thesis of Locke's state of nature demonstrates that the ideal state should be governed by rational people who use reason and abide by natural law limits to preserve the whole. For Locke, a simple majority of rational people can create a peaceful state of nature.[1426] Locke's state of nature is not just an idealistic and impossible utopia. Locke actually gives hope through the nation that a simple majority who follow reason and obligations of the law of nature can create the necessary conditions for a new order of mutual understanding and peace. It is incumbent upon us as individuals to achieve this state. The more individuals who follow reason, the greater the chance to achieve a majority; the self-order of peaceful understanding will follow. Instead of colliding self-interests, there would be a majority who think of others, creating a system in which each individual is defended by others. The likelihood of this peaceful state is not relevant for the purpose of thesis—only the demonstration that Locke believed it to be possible.

Locke's property theory, with is value as the foundation of natural law, is a solid answer to the current legal system's need to better protect the environment, natural resources, animals, and humanity. Locke's natural law limits demonstrate how we can enjoy protected property rights without harming the rights of others.

This thesis does not propose something new. I only demonstrate that my interpretation of Locke aligns with that of other natural law teachers before his time. The eternal rights given to us by law are balanced by the obligation to respect the same rights of others. The forgotten yet superior natural law and its limitations have been the moral guide for the good of the whole but are not represented in positive property law. The right to accumulate was indeed based on Locke, yet it ignores the corresponding obligations to respect the same rights of others. Locke could not have promoted unrestricted rights without obligation or limitations on the self. This goes against his multiple references to the natural law obligations and the place of morality and the common good.[1427] It would defy Locke's use of reason as above the self when acting for the whole and the state of nature. The purpose of this thesis is to demonstrate the universal and timeless validity of Locke's natural law obligations in limiting the abusive use of the self, thereby preserving the whole.

I agree with Simmons, Tully, Ashcraft, and their followers and their interpretation of Locke.[1428] But contrary to Tully's use in land right, I argue that Locke clearly authorises certain private property rights in land if there is a corresponding obligation to respect the same rights of others. I join Ashcraft, who clearly held that Macpherson, Strauss, and their followers literally reverse Locke's words in saying that Locke argues for self-interests only. Locke is clearly motivated by the common good and preservation of the whole.[1429] This is

[1426] See analysis of the possible peaceful state under the majority, p. 73.
[1427] See Locke concern's for the good of others, from p. 100.
[1428] Ashcraft's, (1986) conclusions support my arguments. Ashcraft notes that Locke has intended more than the motivation of the self. His whole theory is construed based on the improvement of the common good. Ashcraft, (1986), 266
[1429] For Ashcraft, (1986), "[T]o suggest that Locke ever sets men free from their natural law obligations such that *wealth may be accumulated solely because individuals desire to do so and without any social constraints* on its employments *is to* ***reserve completely the thrust of his argument in the Second Treatise****, not to mention the political rational …* ***claim to represent the common good against the arbitrary self-interest of an individual*** (the king)" Ashcraft, (1986), 266 (emphasis added).

especially the case with land that is conditioned on its amelioration for the good of the whole. Locke does not simply support exclusive and limitless property rights as represented in the law of property. He proposes a radical reinterpretation of the foundation of property so that it will always respect the natural law limits and for the peaceful preservation of the whole. I agree with Ashcraft in that it seems strange that so few have raised the fact that Locke is radical in proposing that after enclosure, property should revert to the possession of another if land is not cultivated.[1430]

Today, when the preservation of mankind, animals, and natural resources is in danger, a drastic change in the legal system requires a new understanding of the source of property. Applying the natural obligations in Locke could be the answer. Private property rights can continue if limited by the respect for the rights of others and a responsibility to the environment.

Locke guides us in how to preserve the whole in the long run using reason to limit certain appetites. According to Locke, we can enjoy the pleasure and comfort of increasing and accumulating property. This right is protected, but it is conditioned on the obligation respect this right of others. We must care for the property and its amelioration for future use so that the flow of property is protected for others and for the future. We are thus allowed to accumulate as much property as we labour for as long as we observe Locke's natural law limits. Becker (1977) noted that Locke's labour theory is "virtually unchallengeable . . . . One might ignore [the labour theory] (as Hume did), but would not deny it, even if one were attacking the whole notion of 'primitive acquisition.'"[1431]

I end this thesis with correspondence between Locke and John Shute regarding Lord Barriston's testimony: "*You alone have vindicated the Rights and Dignities of human nature, and have restored Liberty to Men's Consciences from the Tyranny of human and their own Passions.*"[1432]

This perfectly demonstrates Locke's claim that human nature finds its dignity in the ability to listen and follow the voice of reason above immediate needs and passions. In sacrificing desire in favour of being responsible to all of creation, guided by natural law limitations, men become free. When we succeed in overcoming these desires, we liberate ourselves from the tyranny of passion, which leaves us no choice.

[1430] In his words, "Locke endorses enclosure even to the point of arguing that if someone has already enclosed the land but allowed it to *remain uncultivated*, then the land, '*not withstanding his enclosure, was still to be looked on as waste, and might be the possession of any other . . . . It seems strange that this rather radical endorsement of the claims of labor over those of land ownership has been so little commented upon by those who are so eager to rewards Locke the honor of having formulated the modern defense of the private ownership of property'*…Locke's chapter on property is one of the *most radical critiques of the landowning aristocracy produced during the last half of the seventeenth century*" Ashcraft, (1986), 272–273 (emphasis added).
[1431] Becker, (1977), 32.
[1432] Emphasis added. See Dunn, (1969), 246 citing Locke, (30 Nov. 1703), *Letter to Locke*, MS, c18, fo.101.

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